MINUTES

Health Information Exchange Legal Work Group Meeting (HIE LWG)

Meeting Date: April 13, 2012

Time: 10:00 a.m. – 12:40 p.m.

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

Members Present: Joy Styrcula for John Collins, Chair; Carol Berkowitz, Florida Association of Homes and Services for the Aging; William P. Dillon, Messer, Caparello & Self; Heidi Garwood, Humana; Diane Godfrey, Florida Hospital; Jan Gorrie, Ballard Partners; Rodney Johnson, Florida Department of Health; Karen A. Koch, Florida Council for Community Mental Health, Inc.; Julie Meadows-Keefe, Grossman, Furlow and Bayó; Lisa Rawlins, South Florida Regional Extension Center; and Annette Riley, Holmes Regional Medical Center

Members Absent: Bill Bell, Florida Hospital Association; Craig Dalton, Pensacola Bay Area Chamber of Commerce; Diane Gaddis, Community Health Centers Alliance; Sandra Greenblatt, Sandra P. Greenblatt, PA; Maureen Levy M.D., KePRO; Lynn McCartney, Florida Justice Association; Holly Miller, Florida Medical Association; and Nick Romanello, Health Care District of Palm Beach County

Staff Present: Alex Añé, Heidi Fox, Milly Hardin, Pam King, Doug Lomonico, Justin Thorington, and Carolyn H. Turner

Interested Parties Present: Jim Bracher, Florida Association of Health Plans; Melissa Hargiss, Harris; Nancy Hayt, Florida Hospital; and André Hébert, Harris

Meeting Materials: Agenda, Minutes, Privacy and Security Framework Program Information Notice, Proposed Direct Reciprocal Support Agreement (DRESA), Data Use and Reciprocal Support Agreement (DURSA), Comparison of DRESA and DURSA, Behavioral Health Data Exchange Project Participants

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

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

Review and Approval of Minutes: Ms. Styrcula asked the committee to review the minutes from the January 27, 2012, meeting. There were no corrections.

Motion: Ms. Styrcula asked for a motion to approve the minutes which were unanimously approved.

Previous Action Items: Ms. Carolyn Turner briefly reviewed the two action items from the previous meeting. The first action item was to receive comments on changes to the Direct Secure Messaging (DSM) subscription agreement. Ms. Turner reported that comments from members were incorporated and there were no additional changes from the Health Information Exchange Coordinating Committee (HIECC) which was

presented the proposed changes at its meeting on March 2, 2012. Ms. Turner suggested one additional change to the operating policies to specify a requirement of 42 CFR Part 2 as follows:

> Re-disclosure Prohibition Notice. Participant and Participant Users agree to give notice of re-disclosure prohibition as required by 42 CFR Part 2 Confidentiality of Alcohol and Drug Abuse Patient Records or other Applicable Law.

She indicated that while this is a requirement of law, stating it in the agreement clarifies the responsibilities of Participants and Participant Users. She asked for members to let her know if there are any concerns; otherwise, it will be included in the DSM agreement to be put into use in May 2012.

The second action item was to schedule a meeting of the HIE LWG to review the Health Information Service Provider (HISP) to HISP agreement which is being discussed today.

Privacy and Security Framework Program Information Notice: Ms. Turner reported that the Office of the National Coordinator for Health Information Technology (ONC) recently issued a Program Information Notice to state designated entities. It not only provides guidance for state designated entities, but also is important because it indicates the current direction of the ONC regarding potential privacy and security requirements.

The framework includes four domains that are applicable to both direct exchange and query model health information exchange. These domains are "Openness and Transparency," "Collection, Use, and Disclosure Limitation," "Safeguards," and "Accountability." There are four additional query model domains which are "Individual Access," "Correction," "Individual Choice," and "Data Quality and Integrity." The framework does not distinguish between federated and centralized query models in regard to domains that must be addressed.

Ms. Turner briefly reviewed each of the domains and the associated guidance. She asked if there were any questions or comments. Ms. Diane Godfrey asked if the Florida HIE would need to address domains as it relates to participant organizations that maintain a centralized database for HIE. Ms. Turner indicated that ONC may consider this a responsibility of the Florida HIE under the accountability domain.

Ms. Godfrey also inquired about passing corrections or updates through to FL HIE participants. Ms. Turner responded that the planned policy is to have patients go to the source provider/document to make corrections.

Proposed Direct Reciprocal Support Agreement - DRESA: Ms. Turner introduced the proposed Direct Reciprocal Support Agreement (DRESA) agreement as the Agency's model for HISP to HISP arrangements. She explained that the federal Data Use and Reciprocal Service Agreement (DURSA) is the basis of the DRESA. The DURSA was developed for the query model Nationwide Health Information Network Exchange (NwHIN Exchange) and has national standing. The DRESA is likely to be more widely accepted being based on the DURSA.

Ms. Turner explained that the DURSA was written for query model exchange and has more limited permitted purposes than the proposed DRESA regarding health care operations permitted. Ms. Turner noted that relatively few changes were required to draft the DRESA from the DURSA. Many of the changes were to remove sections not applicable or needed. The DURSA is a multi-party agreement and includes a governance structure that was eliminated in drafting the DRESA as a two-party agreement.

Ms. Turner briefly reviewed each major section of the DRESA. She asked if there were any questions or comments. Regarding the provision that participant users send a re-disclosure prohibition notice if required by application law, Ms. Godfrey asked if providers could place the re-disclosure prohibition notice on every e-mail. Ms. Turner indicated the DRESA does not address how participants meet the requirements.

Mr. Rodney Johnson noted that the release of HIV test results must also be accompanied by a re-disclosure prohibition notice as required in 381.004(3), Florida Statutes.

Ms. Godfrey asked whether DSM provides out-of-office messages. Ms. Turner indicated that notice of delivery and read receipts are provided. Ms. Nancy Hayt asked about the mailbox size limit and whether the participant will be notified when the limit is reached in order to take corrective action. [It was later determined that DSM does not provide out-of-office messages. The mailbox size is 1 GB and participants will be noticed by the DSM (Harris) administrator when the size limit is reached.]

Ms. Julie Meadows-Keefe asked if it is possible to forward e-mails to non-DSM mailbox. Ms. Turner indicated that mail could not be sent outside of the DSM system unless a HISP to HISP connection is first established.

Comparison of the DRESA and the DURSA: Ms. Turner indicated that the DRESA and DURSA are similar in structure in that terms and conditions are stated in the body of the document with attachments for technical requirements. The technical attachments of the DURSA address the query requirements of the NwHIN Exchange. The technical attachments of the DRESA reference the ONC Direct Project requirements; certain operational requirements from the Florida DSM agreement are also included.

To the extent possible, the DURSA language was used in the DRESA terms and conditions. A significant similarity is that both agreements require a participant have a valid and enforceable agreement with its participant users.

Ms. Turner briefly reviewed each of the content topics and the differences between the DRESA and DURSA. She asked if there were any questions or comments. Mr. James Bracher asked what parties will sign the DRESA. Ms. Turner indicated that Harris Corporation would sign for the Florida HIE and the other party would determine who would sign within their organization. She clarified that the DRESA does not replace the DSM subscription agreement.

Mr. Bracher requested that the State Consumer Health Information and Policy Advisory Council (Advisory Council) be provided the documents distributed to the HIECC related the Strategic and Operational Plan update due to ONC in June. These documents are being prepared for the HIECC's review at its May 18, 2012, meeting.

Mr. Bill Dillon asked whether the Agency would require that a HISP with which the Florida HIE connects be a legally constituted entity. Ms. Turner indicated that the HISP must meet technical and legal requirements and conformance with national standards.

Behavioral Health Data Exchange Project: Ms. Turner presented a brief overview of the purpose and current status of the Behavioral Health Data Exchange Project. She stated that the purpose of the project is to pilot the interstate exchange of behavioral health treatment records among treating health care providers using Nationwide Health Information Network (NwHIN) direct protocols for secure email, and that six states are participating in the project: Alabama, Florida, Kentucky, Michigan, Nebraska, and New Mexico.

Ms. Turner explained that the project is developing policies and procedures for interstate exchange that meets federal and state law of the consortium states. The project is now moving into the pilot phase in which interstate exchange will occur using real or fictional data. The kickoff meeting for the pilots is April 20, 2012. Florida is on-schedule to participate in the project pilots starting in May 2012.

Ms. Karen Koch added the behavioral health providers will identify primary care providers in Florida that will also participate in the project. The facilities will use their own consent forms.

Agency Update: Ms. Turner reported that the Agency filed notice of rulemaking January 6, 2012, to amend the rules for the patient authorization forms previously adopted in July 2010. She stated that the changes are to conform to federal guidelines issued in July 2010 on 42 CFR Part 2 requirements for the release of substance abuse treatment records. Ms. Turner said the additional clarification of the forms and a Spanish language version of the two forms are included. She added that the rule amendments and forms, showing changes, are posted under "Rule Development" on the FHIN website.

Ms. Turner indicated that she had received comments from the Joint Administrative Procedures Committee (JAPC) that requested the Agency address its authority for rulemaking under laws and regulations cited in the forms or remove the citations, and the Agency needs to remove the re-disclosure statement or word it exactly as in 42 CFR Part 2. She stated that these changes were noticed on March 16, 2012. The rule is expected to be adopted in May 2012.

Ms. Koch asked if the forms could be altered and still meet the requirements for the liability protections in statute. Ms. Turner indicated that the forms could not be altered. The re-disclosure notice would need to be a separate document.

Ms. Turner reported that changes were recently made to the Patient Look-up (PLU) subscription agreement to conform to federal guidelines on 42 CFR Part 2 requirements for the release of substance abuse treatment records issued in December 2011. She explained that the change requires participants to report instances of medical emergency access where patient consent was not obtained to the health care providers recorded in the health data records accessed. In addition, changes were made to provide for notice of re-disclosure prohibition that will be displayed whenever a user access data from the Florida HIE. Displaying the notice is a responsibility of participant organizations to handle appropriately since it is the participants that provide portal access to users.

Ms. Godfrey expressed concern about the scope and feasibility of the proposed changes. Documentation would need to be provided whenever emergency access occurs, regardless of whether substance abuse treatment records subject to 42 CFR Part 2 are accessed. She indicated that this requirement would limit use the PLU service for emergency purposes and be a barrier to adoption. She also indicated that the requirements regarding notice of re-disclosure prohibition were problematic.

Members of the LWG discussed the requirements of 42 CFR Part 2 and other options for addressing the requirements, including identifying 42 CFR Part 2 providers in Florida, utilizing the service registry to identify the data source, using the audit log to meet the documentation requirements of 42 CFR Part 2, requiring flags in the Continuity of Care document to identify records subject to re-disclosure restrictions, and possibly filtering behavioral health data if no other solution is possible.

Members discussed the scope of 42 CFR Part 2 and the clarity of the federal regulations in this regard. The benefits and original rationale for including behavioral health data in health information exchange were discussed. It was agreed that query model health information exchange is more challenging than direct exchange and that the Agency would revise the proposed language for the PLU subscription agreement to address the concerns discussed to the extent possible.

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

1) The Agency will distribute the completed Privacy and Secure framework to LWG members for their review and comments by May 1, 2012.
2) The Agency will cc the Advisory Council as reports required by the ONC for the 2012 update of the Strategic and Operational Plan are issued to the HIECC.
3) The Harris team will provide information about the size capacity of the DSM mailbox and what happens when mailbox storage capacity is exceeded.
4) The Agency will review the capabilities of the audit log and revise the proposed revision to conform to 42 CFR Part 2 in the PLU subscription agreement to address concerns about scope and feasibility.
5) The Agency will receive comments on DRESA through May 1, 2012.

Adjournment:

There being no further business to discuss, the committee adjourned at 12:40 p.m.