

MINUTES

Health Information Exchange Legal Work Group Conference Call

Meeting Date: December 5, 2017
Time: 10:00 a.m. – 12:00 p.m.
Location: GoToWebinar

Members Present: Lisa Rodriguez, Agency for Health Care Administration (Agency), Chair; Jarrod Fowler, Florida Medical Association; Mary Pat Moore, Florida Association of Health Plans; and Kimberly Tendrich via phone, Florida Department of Health.

Staff Present: Heidi Fox, Nikole Helvey, Pamela King, Aaron Parsons, and Dana Watson.

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 introduced herself to the membership as the new chair of the work group. Ms. Fox conducted the roll call, which determined that a quorum was not present.

Approval of Minutes

Ms. Rodriguez noted two necessary edits in the minutes. With no quorum present, the Work Group will vote on the amended minutes at its next meeting.

Previous Action Items

Ms. Dana Watson reported that the following action items from the last Legal Work Group meeting were completed.

1. Remove the DRAFT watermark from the agreements and place the word DRAFT in the header.
2. Send members revised agreements for review with recommended changes from today's meeting.
3. Meet with Diane Godfrey re:
 - a. Consent model.
 - b. ENS per patient per year fees for data sources.

Program Updates

Florida HIE Transition

The contract with Harris Corp., who was the primary vendor for the Florida HIE, ended June 30th, 2017. AHCA entered into a no-cost agreement with Audacious Inquiry (Ai) as prime vendor moving forward. Ai has been a partner to Harris on the Florida HIE project since inception. The agreement requires Ai to offer the existing Florida HIE services (Event Notification Service (ENS), Direct Messaging, and the Patient Look-Up (PLU) service) or their functional equivalent. Since project inception, Ai has provided the technical infrastructure for the ENS, resulting in a clean transition of services. The Direct Messaging service continues to be provided through a sub-contract with Inpriva who offers a Florida branded service at a negotiated price. The technical infrastructure for the PLU service is evolving based on participant feedback, utilization patterns, cost and return on investment, and opportunities for similar federated query based exchange services in the national HIE environment. Following a number of meetings with participants, the PLU service is transitioning from a state specific infrastructure to one connecting through the eHealth Exchange (eHX), Carequality, or other platforms. Ai continues to maintain the State Gateway to the eHX which currently supports one connection. The State Gateway is being upgraded from a legacy Aurion platform to CONNECT. In addition to providing technical assistance to organizations onboarding directly to the eHealth Exchange, Ai will offer connectivity to the eHX through the upgraded State Gateway moving forward.

Health Information Exchange Study

The Agency is planning to update the environmental assessment for the State Medicaid Health Information Technology Plan (SMHP). This assessment, the HIE Study, will identify existing resources for health information exchange, best practices for health data systems, the potential to leverage existing public and private health care data sources for exchange, and levels of access to health records across delivery systems including eligibility for public programs or private insurance.

The HIE Study will identify existing and potential solutions that could be used to ensure that health care services are clinically appropriate, and to facilitate cost avoidance through the elimination of duplicative services or over-utilization of services. The study will include identifying pathways to potential solutions, estimated costs, and policy levers that could positively influence implementation and adoption. The Agency has contracted with North Highland for this study.

CMS Funding Opportunities

The Centers for Medicare and Medicaid Services (CMS) has made funding available to assist eligible providers with the advancement of health information exchange in Florida. These funds may be used to cover the initial costs associated with onboarding a Health Information Exchange (HIE) organization to the eHealth Exchange (eHX), or to expand regional HIEs through the onboarding of Medicaid hospitals, group practices, or long-term and post-acute care facilities, in support of Medicaid providers' ability to meet Meaningful Use objectives.

To receive funding, entities must be operational HIEs supporting Medicaid Eligible Providers in meeting the requirements of Meaningful Use. An operational HIE is defined as an entity that supports the connection of providers to mobilize the exchange of health data electronically across organizations with disparate electronic medical records (EMRs), within a region, community, or referral network. Funding is available on a first come, first served basis to HIEs achieving the required connectivity, as determined by the Agency. HIEs will be selected pursuant to a Request for Proposals (RFP), which will be released in the middle of this month. Selected HIEs will be paid in arrears for technical costs and software needed to establish connectivity.

CMS also provides funding to cover implementation costs for Medicaid providers interested in receiving hospital encounter notifications via the ENS. The funding will cover the cost to subscribe up to 200,000 patients per Medicaid provider organization for a period of 12 months. The organization must have authorization to access the patient information available via ENS. Once the organization provides a signed ENS Agreement, ENS Onboarding Checklist, and patient panel to the ENS vendor, the vendor will invoice the organization for a 12-month subscription based on the number of identities included in the patient panel. The subscribing organization can then invoice the Agency for the same amount.

Ms. Diane Gaddis asked if the funding for Regional Health Information Organizations (RHIOs) would be tied to the requirement to connect to the state HIE. Ms. Fox explained that CMS uses term HIE as a verb rather than a noun, and the funding is available based on the action of exchanging. Ms. Gaddis inquired if there is a total cap on the ENS funding. Ms. Fox responded that there would be \$450,000 for 2018, which should cover between 3M and 5M lives. Ms. Fox stated that the Agency will submit a funding request to CMS next year which reflects demand.

Crosswalk Tool

Ms. Fox described the HIPAA crosswalk tool on the Florida Health Information Network (www.fhin.net) which compares Florida state laws to the federal HIPAA laws indicating which law is more stringent. The tool currently being updated with the Cures Act provisions.

Discussion Items

Consent

Ms. Fox provided some background on consent policy. Given Florida's statutory restrictions on the release of mental health information, electronic health information exchange in Florida requires an "opt-in" consent policy. "Opt-in" requires express consent for a record to be accessed or released. There are two ways to comply with opt-in: consent to access (also known as consent to query) and consent to release. A consent to access policy was adopted for the PLU service where a treating provider at the point of care had to obtain patient consent to query for records from other providers. The infrastructure implemented for the PLU service included an audit application called FairWarning that allowed participants to see who had queried for their data, in order to monitor activity, and ensure appropriate patient consent had been obtained. This audit capability is not available in the eHX.

Ms. Fox explained that in the eHX is governed by the DURSA (Data Use Reciprocal Support Agreement), which stipulates that participants are required to obtain appropriate consents for exchange. This very broad language puts the responsibility of consent compliance onto the participants, guided by state and local laws. For most query based health information exchange services, participants obtain consent prior to releasing patient records. This means that when a treating provider queries for records, participants responding with records have obtained patient consent prior to releasing the information. Participants have indicated that the consent forms can be broadly phrased to cover both forms of opt-in authorizations. For query based exchange, the Agency is leaving consent management in the hands of the covered entities. Ms. Fox noted that some types of exchange, such as providers subscribing to the ENS, consent to access patient information is required because patient data may be available for which consent to release was not obtained.

State Gateway Agreements

Pursuant to the transition to Ai, the ENS Subscription Agreements with data sources were assigned to Ai through a simple legal process. Agreements with the subscribers to ENS were re-executed. No changes have been made to the ENS Agreement or the General Participation Terms and Conditions other than the Fee Schedule for subscribers, which has been updated to offer a discounted price to subscribers who are also data sources.

Because of the transition away from the legacy PLU service platform, the previous PLU Subscription Agreement is no longer applicable. Organizations connecting to the eHX will execute the DURSA. For Participants utilizing the Ai CONNECT State Gateway to eHX, Ai will create agreements with participants for services related to the Gateway. The Agency will approve these agreements. Required elements of these agreements will be:

- a Business Associate Agreement (BAA),
- a flow down of the DURSA which provides standards, specifications, and policies for exchange;
- the terms and conditions of the contractual relationship between Ai and the Participant;
- a fee schedule that is reasonable and consistently applied across agreements; and,
- the scope of work for Ai services, connection, hosting, technical assistance, and maintenance. The menu of services may vary with participants.

Data Retention Addendum to the ENS Agreement

Based on feedback from stakeholders across the state, the Agency decided to pursue a federated model of health information exchange when the services for the Florida HIE were built under the Cooperative Agreement with the ONC in 2011. In this model, each participating organization maintains control of its own data while agreeing to a technical and policy framework to facilitate exchange between participants. When the Agency implemented ENS in 2013, the ENS Agreement was designed to prohibit the vendor from retaining any of the incoming hospital encounter data beyond the timeframe necessary to match and route this data to the appropriate health plan or provider organization. This policy decision limits the functionality of the service.

The HIE environment in Florida has evolved considerably since the inception of the Florida HIE, and the blanket prohibition on data retention prevents subscribers from getting the most out of the available services. The Agency believes

a better approach going forward would be to allow data sources to choose whether to allow the Florida HIE vendor to retain data in order to offer enhanced services. The proposed Data Retention Addendum to the ENS Agreement would allow interested data sources to permit the vendor to retain their encounter data in order to enable additional functionality and value. Permitted purposes for data retention may include:

- Allowing the vendor to use the incoming encounter data to build a subscription panel for a hospital. Interested hospitals could be notified when their patient is seen at another facility, allowing better care coordination and reduced unnecessary admissions and readmissions.
- Notifying Emergency Department (ED) doctors and hospital admissions staff about a patient's prior hospital encounters at the time of admission. This would allow pro-active identification of complex patients, chronic disease patients, frequent ED utilizers, and others who could benefit from more intensive care management.
- Enhanced matching between incoming hospital encounter data and subscriber patient panels by retaining demographic data from data sources such as Patient ID. Enhanced matching based on a larger data set benefits the hospital, subscriber, and patient.

Data sources that choose not allow data retention would maintain the status quo – the vendor would continue to purge their data from the system in accordance with the current agreement. An optional addendum to the existing agreement allows each participant to choose their level of engagement with the Florida HIE.

Mr. Sam Lewis asked how many hospitals were connected to the ENS. Ms. Fox responded that 216 hospitals are currently connected as data sources and two of these hospitals are in the process of becoming data subscribers. Mr. Lewis inquired if the two new subscribers were “ok” with their data being retained. Ms. Fox explained that there is interest in the additional services which data retention would allow. Ms. Gaddis asked if there is an expectation that the new functionality and retention would result in an increase in subscriber fees. Mr. Evan Carter, with Ai, responded that the price of the same base functionality would remain as it is now. There would be an optional “à la carte” menu of other services for which additional fees may be assessed.

There being no further discussion, the work group adjourned at 10:35 a.m.