

Legal and Policy Advisory Group Meeting

March 26, 2013 2:30-4:00p

Name	Organization
Claudia Boldman	Information Technology Division
Gillian A. Haney	MA Department of Public Health
Wendy Mariner	Boston University
Jacqueline Raymond	Brigham and Women's Hospital
Diane Stone	DL Stone Consulting
David Szabo	Edwards Wildman Palmer LLP
Judy Silvia	MeHI
Sean Kennedy	MeHI
Support Staff	
Micky Tripathi	Massachusetts eHealth Collaborative
Mark Belanger	Massachusetts eHealth Collaborative
Carol Jeffery	Massachusetts eHealth Collaborative
Erich Schatzlein	Massachusetts eHealth Collaborative

Summary of Input and Feedback from the Provider Advisory Group

- The Legal & Policy Advisory Group has prepared its docket of issue areas to work through this year in the following priority order (in order to align with EOHHS technical design/requirements development and phase 2 Participation Agreement preparation):
 - Legal & policy issues related to statewide MPI/RLS
 - HISP to HISP trust
 - Consent for query (targeted and untargeted)
 - Applicability of Chapter 224 HIE provisions
 - Statutorily protected HIV test result and genetic test result data
 - Statutorily protected substance abuse treatment data
- The Legal & Policy Advisory Group will engage expert testimony for several of these issues in order to bring perspective on how organizations are interpreting and acting upon the law in current practice.
- Many organizations have already spent time and money on developing local HIEs along with policies and procedures (e.g., Consent policy). There is a need to be mindful of the policies that are already in place and for the MassHIway phase 2 policy design to take these into account.
- Several phase 2 issues were raised in the Legal & Policy Work Group last year that should be brought forward for resolution (e.g., Permitted users of MassHIway).
- Since payers are an anticipated participant in the MassHIway there is a need to consider the concept of “minimum necessary” and how it is applied.

Review of Materials and Discussion

Project Updates

- Mass HIway Phase 2 Timeline Update (Slide 2)
 - Currently, we are waiting for final approval from CMS for phase 2 services. The expectation is to hear back within this month. Our understanding is that there are no reasons to not be approved.
 - The funding for the Mass HIway project is not affected by sequestration, as the source is Medicaid infrastructure dollars.
 - Please see slide deck for full timeline updates
- HIway Implementation Grant Update (Slide 3)
 - HIway grant opportunities have been posted by MeHI. Potential HIway participant organizations may be able to obtain up to \$75K to use toward migrating existing services onto the HIway.
 - Three webinars are being run by MeHI to give information on grant program. The basic concept is to accelerate adoption of the HIway, and the goal of the grants is for organizations to take existing processes and move them onto the HIway. Ultimately, the HIway hopes to have successful use cases built by the grants, and use these success stories to market HIway use in the future.
 - \$2M overall funding, up to \$75 each proposal.
 - Application due date for grant submission is 4/16, by 8:00am

Meeting Goals Discussion (Slide 5)

- The advisory group reviewed the goals for the meeting discussion. The group will aim to tee up and prioritize the issues presented for discussion (not solve them).
- The group was asked to wait until the presented issues could be reviewed prior to discussing prioritization and timeline ideas.

Issue Discussion (Slides 6-11)

- The advisory group discussed the known issues affecting Phase 2 of the HIway. Please see slides for Issues Descriptions, Goals, and Key Questions to Address.
 - **Issue: Applicability of Chapter 224 HIE provisions (Slide 6)**
 - Comment: The HIway should determine where the law applies (and where it doesn't), and also how it applies. The most pronounced area will be related to patient consent.
 - Comment: Clarification is needed on the deadline for organizations/providers to become members of the Mass HIway. This should include clarification on the requirement of what level of the HIway do organizations need to participate.
 - Comment: A suggestion was made to break down Chapter 224 into a granular list of questions we are receiving.

- Comment: The Advisory Group may seek expert testimony, real life examples from the field, and public comment to inform the HIT Council
- Question: Is it possible to also tease out unintended consequences?
 - Answer: Yes, the HIT Council is explicitly charged to give the feedback to the legislature regarding current law and any areas that need improvement and modification. This Advisory Group can provide information on unintended consequences.
- **Issue for discussion: Legal & policy issues related to statewide MPI/RLS (Slide 7)**
 - Description of issue and key questions that the Advisory Group will need to address.
 - There are many issues to work through with the master person index. – For example, what level of consent is needed for patient demographic information that is centrally managed and what are the permitted uses of this data.
- **Issue for discussion: Consent for query (targeted and untargeted) (Slide 8)**
 - Description of issue and key questions that the Advisory Group will need to address.
 - Distinction to be made between a “targeted” and “untargeted” query based upon current work underway with the Federal Privacy and Security Tiger Team. With a targeted query the person conducting the query knows that a patient has records at a particular institution. With an untargeted query the person conducting the query is asking all HIway members if they have information regarding a patient. (e.g., Emergency department use case)
 - Comment: There was a suggestion to apply the federal use cases to compare these with the cases in Massachusetts.
- **Issue for discussion: Statutorily protected HIV test result data (MGL C111 70f) (Slide 9)**
 - Description of issue and key questions that the Advisory Group will need to address.
 - Note that if we can solve for HIV test results, we can likely use the same type of solution for statutorily protected genetic testing information.
 - Comment: The Department of Public Health provided an advisory letter and FAQs as guidance, post chapter 84, on how to handle HIV test result data. There have been more than one iteration of this guidance but it provides a fairly narrow interpretation of the law.
 - Comment: Agree that we can solve for statutorily protected genetic testing information with the caveat that the portfolio of protected genetic tests keep changing so there will be a need to stay current with these.
- **Issue for discussion: Statutorily protected substance abuse treatment data (USC Title 42) (Slide 10)**
 - Description of issue and key questions that the Advisory Group will need to address.
 - What does the law say and how is it being interpreted and what are the policy and technical controls that should be in place to properly handle such protected information?
- **Issue for discussion: HISP to HISP trust (Slide 11)**
 - Description of issue and key questions that the Advisory Group will need to address.

- There are growing indications that providers and healthcare organizations may sign up to be part of an enterprise, regional, or vendor sponsored HIE or HISP and that providers will access the MassHIway indirectly.
 - Cerner, an EHR vendor example, is developing a HISP at a national level for their clients. Cerner does not want to have to adapt to each state or community HIE to participate within them. This would mean that the HIway would have to determine if we would accept the trust agreement with *all* Cerner clients (not just in our state). There are reasonable arguments on both sides for accepting or rejecting this type of HISP.
 - This will bring up a policy question in determining if the HIway is willing to accept HISP integration with all vendors, only certain ones, or how to pick and choose. Additionally, will the HIway choose to accept these HISP integrations for phase 1, phase 2, or how to determine based on the HISP.
- Question: Is this a discussion that we will have regarding federated trust and transitory trust?
 - Answer: Yes

Other Issues (Slide 12) – The advisory group was asked to bring other issues for discussion and planning considerations:

- Comment: Many organizations have already spent time and money on developing local HIEs. They have possibly built their own repository and developed consent procedures for populating that repository. Will the HIway be asking organizations to sign up patients using a different form for each HIE? Do we ignore the other HIE’s consent? Are these organizations connecting through the same infrastructure as the other HIEs? Will the HIway require a different process? How will they operationalize consent gathering? How will they get the “opt-in?” How long do you make the form for the patient to consent? Is it a separate page specifically for the HIway, in addition to other local HIE’s consent forms?
- Comment: In Phase 1 workgroup discussions there were issues that the group decided to push to phase 2. These should be brought forward such as: Process for expanding permitted users of the MassHIway (e.g., Research participants); Patient participation.
- Question: Who is eligible to connect to the HIway right now?
 - Answer: Any covered entity or business associate (per HIPAA definitions).
- Question: Are we going to try to operationalize queries from payers to provider organizations?
 - Answer: Yes
 - Comment: Will need to deal with “minimum necessary”
- Comment: MeHI has been approached by vendors about sharing information with other applications for PHR use. This would be sending information to other health applications (i.e. diet apps for phone).
- Comment: There are challenges with healthcare organizations having to operationalize HIE consent down at the line/granular patient to provider level. This will require changes to

workflow, policies and procedures, forms, scripts and FAQs and office staff will become responsible for explaining and following through on these changes with patients.

- Comment: MAeHC has been working with organizations throughout the state regarding regional HIE consent approach and HIPAA Omnibus updates. There is an approach to information disclosure based purely upon HIPAA that is gaining acceptance and is currently being vetted with the legal counsel of several of the state’s large healthcare organizations.
- Based on the comments made today, staff will formulate discussion materials. The group will be able to react to discussion items and not be required to develop material. This will alleviate the work burden on the group and allow for reaction to the issues presented.
 - Comment: A suggestion was made to speak with Venkat (EOHHS) about the federal requirements for federated trust.
 - Comment: There are FAQs available from SAMHSA regarding Title 42 part 2. Suggest we circulate among group.

Issues Inventory and prioritization (Slide 13)

- The current timeline roughly mirrors last year. Phase 2 go-live is in October, so participation agreements will need to be signed at that time. We will need to have time to vet the agreements before they are signed. The timeline may slip, but we need to set priorities to complete the agreements.
- Comment: Prioritize the issues that have technical dimensions that will impact technical design and requirements development since EOHHS will need to work through these first with their technology vendors. This includes that MPI/RLS issues and the Federated trust.
- Comment: A request was made to circulate examples of HISP to HISP trust issues.
- Comment: A suggestion was made to have the advisory group directors build a “strawman” priority list and distribute out to the group via email. Also think that all of these could benefit from expert testimony (Note: Straw-man priority list is included here)

Issue area	Priority/ Timing	Need for expert testimony?
Legal & policy issues related to statewide MPI/RLS	1	Yes
HISP to HISP trust	2	Yes
Consent for query (targeted and untargeted)	3	Yes
Applicability of Chapter 224 HIE provisions	4	Yes
Statutorily protected HIV test result data	5	Yes
Statutorily protected substance abuse treatment data	6	Yes

Next Steps

- Key points and recommendations synthesized and provided back to Advisory Group for final comments
 - Question: A request for clarification on the meeting minutes finalization process.

- Answer: The minutes will be sent to the advisory group members for comment, and then finalized and posted to the EOHHS website.
- Presentation materials and notes to be posted to EOHHS website
- Next Legal and Policy Meeting – April 16, 2013, MMS Middlesex North Conference Room, or teleconference (866) 792-5314, code: 7814347906
- Next HIT Council – April 8, 2013, One Ashburton Place, 21st Floor
- HIT Council meeting schedule, presentations, and minutes may be found at <http://www.mass.gov/eohhs/gov/commissions-and-initiatives/masshway/hit-council-meetings.html>