HISPC Legal Workgroup Meeting
Wednesday, October 10, 2007 1:00-3:00PM

In attendance:
**Brian Annulis, Katten Muchin Rosenman LLP
Rob Connor, Illinois Department of Human Services
Steven Glass, Access Community Health Network
Kathy Karsten, Illinois Public Health Institute (project team)
**Laura Martin, Katten Muchin Rosenman LLP
Michael Murer, Murer Consultants, Inc.
Maria Pekar, Loyola University Health System
Doug Polk, Illinois Hospital Association
Nancy Shalowitz, Illinois Department of Healthcare and Family Services
Charles Sheets, Foley and Lardner
Mary-Lisa Sullivan, Illinois Department of Human Services
*Marilyn Thomas, Illinois Dept. of Public Health (project team)
*Moderators
**Legal Contractors

Not present:
Matt Angela, Illinois Hospital Association COMPdata
Julie Bryant, Northwestern Memorial Hospital
Julie Hamos, Illinois State Representative, 18th District (invited guest)
*Jeff Johnson, Illinois Dept. of Public Health (project team)
Robert Kane, Illinois State Medical Society
Anne Mahalik, Illinois Department of Human Services
Frank Sears, Southern Illinois Healthcare
Joel Shoolin, Family Practice Medicine
Darryl Vandervort, Katherine Shaw Bethea Hospital

Marilyn Thomas convened the meeting at 1:05PM. A participant inquired about the legislation (HB 1254) regarding the IL Health Information Network. Thomas reported that the legislation was dead, and was unsure if Julie Hamos would be picking it up in the spring. She also did not know specifically why the IL HIN's place was changed from the Illinois Dept. of Public Health to Healthcare and Family Services. A participant responded, noting that because HFS has the lead on other health initiatives, IL HIN was handed to them. However she thought the change would not hamper efforts to move ahead, and perhaps give the agency more latitude on format.

The documents submitted to the group for review were discussed. Regarding the notice of privacy practices, Thomas said the group will start with the assumption that HIPAA rules would allow sharing, and the group would work to develop language to insert into current notices. Laura Martin added that a major question arose during internal discussions: whether to go with a bare minimum of information, vs. using the paragraph to promote the HIE and its benefits. A participant wondered about the potential risk exposure from the provider side, and whether the HIE fit in the 'safe harbor' as with telecommunications (i.e., AT & T). Some thought that since the provider is transmitting data to a network, additional documentation may be necessary. In further discussion, participants thought the group's recommendation should be that data in a de-identified state comes out of HIPAA bucket, and more investigation should be conducted about the HIE's technical aspects. A participant also said that any notice is voluntary, not required from a provider standpoint and while it would not a burden if they choose to send it, they may need to prepare scripts for patient questions. This dissemination could be done in tandem with a communication project to consumers.

Discussion followed about the intent of the notification document: whether it was to provide the minimum information necessary, or promote the HIE. A participant pointed out that if the notice advocates for the HIE, a provider might be placed in the situation of promoting something with potential risk to their patients. A group member suggested a simplified notice stating the provider's participation in the HIE, with a separate reference (possibly to a Web site) for more information. Further talk centered on whether or not the HIE is intended to store information or merely serve as a conduit, and which party/entity would de-identify data transmitted via the HIE. A team member suggested providing a premise page to the steering committee outlining the Legal work group's perception of the HIE; Thomas noted that the Privacy and Security work group envisioned the HIE as a conduit, not as a storage entity. Another participant also noted that from a providers' standpoint, there might be confusion about when to use an insert. Other administrative questions arose but Thomas stressed that the group should strive to produce as streamlined a document as possible at this time.

Regarding the consent form, Martin pondered the consequences of a patient refusing to sign the form, and whether the work group's role was to decide those consequences. Some advocated for a more concise method (initials rather than check marks) on the form to avoid potential disputed items with providers. Discussion followed about research uses, but some group members wondered if the form was trying to accomplish too much. Further comments noted the difficulty in working with a long, complicated form and the challenges of educating the public. The group decided to omit research from the form, since a separate document would need to be approved by an IRB for any research projects. The redisclosure provision was troublesome to some participants, and others advocated prohibiting redisclosure. Annulis noted that patients would have the expectation that there will be a level of privacy in the HIE concerning their data.

Other discussion included comments on the technical process of flagging certain fields and/or conditions, the language level of the form, and the time frames/expiration dates for data usage. Martin suggested that the group develop one set of forms with a one-page acknowledgement letter and authorization for any additional, sensitive information. Other participants said that promoting patient buy-in would be a task for a possible communications work group, especially given the difficulty of educating patients in a real-time setting. The group also discussed whether the form would need to be signed with every provider, or if it would be universal; Annulis said the assumption was that each provider would need to sign the form, since the HIE wouldn't have a memory capacity. A participant noted concern that separate forms and categories of health information being treated differently might add to the administrative burden at provider offices.

The group approved the use of the draft insert to existing notices of privacy practice. The authorization and consent documents were to be distilled into one form, with specific consent for the HIE. These forms and a cover page to the HISPC steering committee with issues and highlights from the Legal work group's discussions would be produced. Annulis, Thomas and representatives from the Illinois Department of Human Services were to research additional categories for sensitive information (developmental disabilities and alcohol treatment records, respectively). Martin and Annulis will then circulate a draft for the group's feedback. The next meeting of the Legal work group was confirmed for Wednesday, Nov. 14 at 1:00PM, and the conference ended at 2:35PM.