

MINUTES

Health Information Exchange Legal Work Group Meeting (HIE LWG)

Meeting Date: December 13, 2013

Time: 10:00 a.m. – 1:00 p.m.

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

Members Present: Kathy Pilkenton, Chair; Carol Berkowitz, Leading Age Florida; William P. Dillon, Messer, Caparello & Self; Diane Godfrey, Florida Hospital; Jan Gorrie, Ballard Partners; Samuel Lewis, Feldman Gale; Natalie McKellips for Kimberly Tendrich, Florida Department of Health; Julie Meadows-Keefe, Grossman, Furlow and Bayó; Colleen McComas, BayCare Health System; and Holly Miller, Florida Medical Association.

Members Absent: Bill Bell, Florida Hospital Association; Diane Gaddis, Community Health Centers Alliance; Gabriel Hartsell, Galloway, Johnson, Tompkins, Burr & Smith PLC; Karen A. Koch, Florida Council for Community Mental Health, Inc.

Staff Present: Alex Añé, Dylan Dunlap, Heidi Fox, Jeff Gregg, Joy Styrcula, Carolyn Turner and Dana Watson

Interested Parties Present: Ben Browning, Florida Association of Community Health Centers; James Bruner; Nancy Hayt, Florida Hospital/Adventist; Aaron McElwee, Polk County Health Care Plan; Natalie D. McKellips, Florida Department of Health; Michelle Pinto, Harris Corporation; and Shannon Hartsfield Salimone, Holland & Knight.

Meeting Materials: Agenda, Minutes of January 18, 2013 meeting, Proposed Changes to 2014 Subscription Agreements Overview; Patient Look-Up (PLU) Subscription Agreement (redline); Direct Secure Messaging (DSM) Subscription Agreement (redline); General Participation Terms and Conditions (redline); Event Notification Service (ENS) Addendum – Hospital; Event Notification Service (ENS) Addendum – Health Plan; Health Information Service Provider (HISP) Agreement; and eHealth Exchange Addendum

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

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

Review and Approval of Minutes: Ms. Pilkenton asked the committee to review the minutes from the January 18, 2013 meeting. There were no corrections.

Participation Agreement Overview Ms. Turner gave a brief overview of the purpose and history in the development of the Florida Health Information Exchange (Florida HIE) subscription agreements. There is a separate agreement for each of the two services of the Florida HIE: Patient Look-Up (PLU) and Direct Secure Messaging (DSM). The agreements were developed in 2010 and first put into use in 2011.

The DSM agreement was changed to permit uses beyond treatment in 2012. Treatment, payment and operations are permitted uses. PLU continues to be restricted to treatment with limited exceptions. The PLU agreement was revised in 2013 to conform to the federal breach definition, limit access without data sharing, and require a health care provider co-signer if the participant is an information technology vendor.

Ms. Turner referred to the summary of proposed changes to the 2014 subscription agreements in Tab C. The subscription agreements in use are posted on the Florida HIE website (<https://www.florida-hie.net/>).

Proposed Changes to Patient Look-Up Agreement Ms. Turner briefly reviewed each of the proposed changes to the Patient Look-Up (PLU) agreement of the Florida HIE as follows:

- 1) Clarify that access by health plans is not permitted. [2. Permitted Purposes]
- 2) Filtering permitted where explicit consent required by 42 CFR Part 2. [3. b. iii. Responsibilities of Participants]
- 3) Patient Look-Up Access (hybrid) revised to require monthly reporting of transactions. [3. c. Patient Look-Up and Delivery Access.]
- 4) Eliminate Express or Express Lite selection and reference to installation services. [4. a. Vendor Responsibilities]
- 5) Updates fees and billing [5. Fees]
- 6) Change signature line from Health Care Provider Sponsor to Health Care Provider Co-signer.
- 7) Patient authorization audit plan will be submitted to AHCA as well as Vendor and available to other Participants upon request. [Attachment A 3. Universal Patient Authorization Form]
- 8) Participants will cooperate in documenting consent as requested by another Participant. [Attachment A 3. Universal Patient Authorization Form]
- 9) Require designation by a Participant of an individual (“PLU Privacy Manager”) that will have access to the PLU audit log using an account established by the Vendor. [Attachment A 7. PLU Privacy Manger (added)]
- 10) Addition of optional eHealth Exchange addendum

There were no comments on item 4).

Regarding item 1), Mr. Bill Dillon asked whether providers could access PLU in preparation for initial treatment. Ms. Turner indicated they could access PLU but must have patient authorization prior to accessing.

Regarding item 2), Mr. James Bruner asked whether filtering should be required. Mr. Dillon responded that the participant would determine whether to filter. It was noted that participants are required to obtain explicit consent so there is the option to filter or not filter.

Regarding item 3), Ms. Diane Godfrey asked about what information is available from the vendor. Ms. Turner indicated node activity can be tracked but the vendor cannot track what is from users not sharing data (i.e., hybrid access).

Mr. Dillon asked if participants had been informed and the reporting burden. Ms. Turner indicated that participants had been informed but she had not heard back from everyone.

Ms. Godfrey and Mr. Sam Lewis suggested including expectations in the agreement regarding bi-directional data sharing. Mr. Lewis suggested adding that the Florida HIE might charge a fee for hybrid access. It was also suggested that the language should be clarified that retrieval data of the prior month will be reported.

Regarding item 5), Ms. Godfrey suggested that the fees be stated in the agreement. Ms. Turner indicated the process of amending the agreement would be difficult for a multi-party agreement. However, the Florida HIE

provides a 90-day notice. Ms. Fox suggested posting where the current price list is posted in the agreement. Ms. Godfrey indicated the preference is for including the fees in the agreement.

Participants discussed placing the current fee in an addendum or exhibit that would be up-dated without re-signing by the participants.

Ms. Fox reviewed current Florida HIE pricing and Ms. Turner said that the price list is posted under Resources on the Florida HIE website (www.Florida-HIE.net).

Regarding item 6), Ms. Godfrey asked whether the Agency for Health Care Administration (Agency) makes the determination of whether an applicant is a vendor. Ms. Turner indicated the Agency would make the determination.

Regarding item 7), Ms. Godfrey suggested having the audit plan reported to the vendor who will forward to the Agency. This would simplify reporting for participants. Ms. Fox indicated that the Agency is reviewing the audit plans and working closely with participants.

Regarding item 8), Mr. James Bruner asked about breaches and Ms. Turner clarified that an organization would be out of compliance with the agreement which is not the same as a breach. Ms. Godfrey asked about emergency access and Ms. Turner indicated that documentation of emergency access could be provided if applicable.

Regarding item 9), Ms. Julie Meadows-Keefe asked about the role and qualifications of the PLU Privacy Manager. Ms. Turner indicated the best suited individual is to be designated by the participant.

Proposed Changes to the Direct Secure Messaging Agreement Ms. Turner briefly reviewed each of the proposed changes to the Direct Secure Messaging (DSM) agreement of the Florida HE as follows:

- 1) Remove the trade secret status of Provider Directory (DSM addresses will be posted on the Florida HIE website) [4. Vendor Responsibilities]
- 2) Eliminate reference to monthly billing and remove waived fees [5. Fees]
- 3) Notice can be by email [6. Miscellaneous]
- 4) Provide that maintenance of records is a responsibility of Participant Users; permits fees for vendor support and storage; limits archiving to 90 days [Attachment A. Accounting of Disclosures]

There were no comments on items 1) and 4).

Regarding 2), Ms. Nancy Hayt suggested that changes regarding fees for DSM be similar to the additions for PLU. Mr. Bruner asked about the change in fee waivers. Ms. Turner indicated that the fee waiver is being changed to be subject to a 90-day notice. She indicated that after a 90-day notice there may be a fee.

Regarding 3), Ms. Hayt expressed concern about permitting notices to be delivered by e-mail.

Proposed Changes General Terms and Conditions Ms. Turner explained that the General Terms and Conditions are applicable to both PLU participants and DSM registrants. She briefly reviewed each of the proposed changes to the General Terms and Conditions of the Florida HIE as follows:

- 1) Increase days to resolve disputes by informal conference from 15 calendar days to thirty (30) [19. b. ii. Dispute Resolution Process]

There were no comments on items 1).

Event Notification Service (ENS) Addenda Ms. Fox noted that a new Florida HIE service, the Event Notification Services (ENS) was developed and launched in November 2013. The ENS provides timely encounter alerts to health plans to improve coordination of care. Hospital participants make admission and discharge notifications available to the Florida HIE. Health plans provide member rosters that are matched to the hospital data. When a match occurs, alerts are generated that included patient contact information and chief complaint. Ms. Turner noted that the alerts are delivered by DSM to the health plan and the hospital which receives a copy of the alerts.

Ms. Turner explained that as part of the pilot, legal agreements were developed as addenda to the DSM agreement. There is a separate addendum for a health plan wishing to subscribe to the service and a hospital wishing to act as a data source. A health plan participant agrees to provide a current member roster which must be updated as appropriate. In addition, the health plan participant agrees to deliver the notifications received to the member's primary care provider. The hospital participant agrees to provide data for the alerting service and receives a copy of notifications sent to any subscribing health plans. There are restrictions on the use of the data received by all parties and the vendor for any other purposes not specified in the agreements.

Ms. Turner noted the health plan addendum provides for fees for the service and the hospital addendum does not as the hospital is acting as the data source for the service.

Ms. Meadows-Keefe asked about the benefits of the service. Ms. Turner indicated that the service enables coordination of care through timely data on admissions and discharges.

Ms. Meadows-Keefe asked about self-pay patients and Ms. Fox indicated the self-pay data is filtered.

Agency Update Ms. Turner reported that the Florida HIE successfully completed a HISP to HISP connections with an additional eight state programs in 2013 in addition to Alabama which was completed in 2012. The Florida HIE is also connected to Quest and Surescripts. She referred to the latest HISP agreement included in Tab H and reviewed the component of the agreement. She indicated that recently the Florida HIE has been contacted by hospitals interested in making a HISP connection for purposes of meaningful use.

Ms. Meadows-Keefe asked about the requirements for business associate agreements. Ms. Turner indicated that the language is included to insure the other party has business associate agreements. Mr. Dillon asked about assurance that other HISPs are maintaining the same levels of controls as the Florida HIE. Ms. Turner indicated the HISP agreement sets minimum standards to connect with the Florida HIE. Regarding patient authorizations, the users make the determination whether to send PHI to another user. DSM is essentially secure e-mail.

Ms. Turner reported that the Agency applied for participation in the national eHealth Exchange in 2013 and its application was accepted by Healthway. The Florida HIE will start formal testing with the Certification Commission for Health IT in January 2014. She referred to the eHealth Exchange addendum included in Tab I. This addendum is required by Healthway for PLU participants that elect to participate in the eHealth Exchange through the Florida HIE.

Ms. Turner reported that the Agency ended its State HIE Cooperative Agreement with the Office of the National Coordinator for Health IT (ONC) on September 20, 2013. The Cooperative Agreement was ended a few months early to enable the Agency to work on sustainability and collect revenue without being subject to federal reporting requirements. Most state Cooperative Agreements will end in February or March 2014.

Ms. Turner reported on the operational status of the Florida HIE services and goals for 2014.

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

- 1) Add a general statement of bi-directional expectations for hybrid PLU users;
- 2) Clarify hybrid transaction reporting regarding the month reported;
- 3) Add the price list to the fee agreement if re-signing is not required;
- 4) Revise the proposed change to have the audit plan sent to the vendor who will forward to the Agency and
- 5) Take comments on the Florida HIE subscription agreements through January 13, 2014.

Adjournment:

There being no further business to discuss, the committee adjourned at 12:15 p.m.