



HEALTH IT LAW & INDUSTRY



REPORT

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Illinois

Illinois Attorneys Examining State Laws, Rules for Legal Barriers to Statewide HIE

A task force of attorneys in Illinois has begun examining state laws and regulations that could stand in the way of efforts to develop statewide health information exchange capabilities to broadly share health care data electronically among providers, payers, and public health agencies.

Illinois, like other states, is finding that some state laws and regulations intended to protect patient privacy and the security of patients' sensitive medical information are more restrictive than federal privacy and security rules under the Health Insurance Portability and Accountability Act and could be barriers to realizing the full potential of a statewide HIE, Illinois Office of Health Information Technology General Counsel Mark A. Chudzinski told BNA.

Part of the solution in Illinois, Chudzinski said, was for his agency to convene a task force of legal experts who could volunteer their time and expertise in determining where legal barriers to statewide HIE exist and how they might be addressed.

Statewide health information exchange is expected to be at least partially operational in Illinois by 2012, with some regional HIEs in the state fully up and running in 2011, Chudzinski said.

Patient Consent Top Concern. The biggest concern posed by state laws and rules protecting patient health care data is whether providers and others participating in statewide HIEs need express patient consent to share data electronically through an HIE, attorney Bernadette M. Broccolo, with McDermott Will & Emery in Chicago, told BNA. Broccolo is co-chair of the Illinois task force along with Illinois Hospital Association Senior Vice President and General Counsel Mark Deaton.

Broccolo said that where state laws and rules require patient consent to exchange health care data via an

HIE, the question then is whether the state should adopt an opt-in or opt-out model for patient consent. Federal advisory groups are grappling with similar questions for nationwide health information exchange efforts.

"The real concern with opt-in is patients will be reluctant and nervous, even with good protection and we'll end up with incomplete information for treatment purposes and incomplete information that's too sparse to be statistically significant for research," Broccolo said.

Opt-in models for consent are those that would prevent the exchange of patients' health data unless patients agree to their information being shared through an HIE. Opt-out models are those that allow for the exchange of patient data unless patients expressly state they do not want their protected health information exchanged through an HIE.

Chudzinski and Broccolo said the Illinois task force will look at each of the state laws that contain provisions concerning the exchange of sensitive or protected health data and determine whether regulatory or statutory changes are needed to facilitate robust electronic health data sharing at the state level.

Seeking to 'Harmonize' Laws. "We'll be trying to do this in a way that harmonizes the laws and creates some consistency," Broccolo said. State laws protecting sensitive categories of data—including mental health, HIV-AIDS, and substance abuse treatment records—are more restrictive than federal HIPAA, Broccolo said.

In Illinois, for example, laws protecting mental health patients raise questions about how broadly health care data can be shared even for treatment purposes, she said, an area typically not of concern for providers under HIPAA.

"State laws are by no means as flexible as HIPAA," Broccolo said.

Furthermore, she said, some state laws may prevent exchanging clinical data for secondary research purposes.

Broccolo also said that state laws and rules are not only more restrictive than HIPAA for health informa-

tion exchange, but lack the clarity in HIPAA provisions that better define permissible and prohibited activities.

The Illinois task force has formed 10 workgroups that will review data privacy and security provisions in state laws and rules in the areas of behavioral health, substance abuse, HIV-AIDS, sexually transmitted diseases, and genetic testing.

The workgroups also will look at barriers to exchanging data for public health and abuse reporting and medical research as well as barriers to exchanging clinical lab results, prescription drug information, and claims payment information.

Chudzinski said one workgroup will review liability issues that could arise from the use of HIE as well as issues for interstate health data exchange. About 10 percent of health data transactions in Illinois cross state lines to neighboring or nearby states, he said.

Interstate Exchange Issues. In addition to the task force, Illinois is part of the Upper Midwest HIE Consortium, a group of states working together to explore legal and policy barriers to the interstate exchange of protected health information, Chudzinski said.

Other states that are part of the Upper Midwest HIE Consortium—which gets technical assistance from the Office of the National Coordinator for Health Information Technology and is funded through a grant from RTI International—are Wisconsin, Minnesota, Iowa, North Dakota, and South Dakota.

Chudzinski said the Illinois task force already has 20 legal professionals who have volunteered to help with the effort, and he expects the group to grow to about 30 or 40 attorneys.

“The legal issues are very ripe for examination,” he said. “Now, when the rubber hits the road, the legal community is very focused. It’s an exciting time.”

BY KENDRA CASEY PLANK