Health Information Technology Oversight Council

Thursday, August 5, 2010
1:00 p.m. - 5:00 p.m.
Portland State Office Building 1A

Council Members Present: Bob Brown, Bridget Haggerty, Rick Howard, Marie Laper, Bill Hockett, Sharon Stanphill, Dave Widen (On the phone- Greg Fraser, Steve Gordon, Rob Rizk)

Council Members Absent: Brian DeVore

Staff: Chris Coughlin, Oliver Droppers, John Hall, Jan Greene (via phone), Carol Robinson, Kahreen Tabeau, Nova Newcomer, Rochelle Graff, Mindy Montgomery, Dave Witter, Sean Kolmer

Opening and Welcome – Rick Howard, Carol Robinson (Time code: 00:00:00)

Refer to slide deck, slides 1-2

Approval of Minutes

- Rick Howard introduces motion to approve minutes from the June 3, and June 17, 2010 HITOC meetings.
- Bob Brown – motion to approve; Bill Hockett - second; no discussion; all in favor; approved without any further discussion.
- Meeting overview and outcomes

Updates – Carol Robinson, John Hall, Dave Witter, Rick Howard (Time Code: 09:32)

Refer to meeting materials: " Medicare & Medicaid EHR Incentive Program Final Rule" and "OHIT Handout"

Refer to slide deck, slides 3-12

CMS EHR Incentive Program

- Objectives are split into two categories: core objectives and measures. The providers need to meet the "core," simplified compliance with many of the measures. Medicaid and Medicare to be more consistent.
- Question: Whom do providers report to? Staff response: To be eligible for the Medicare incentive payment, providers would report to CMS. For Medicaid, that would be the state Medicaid program. The maximum that providers may receive for Medicare is $44,000 over 4 years, and Medicaid is $63,750. The last year that providers can qualify for MU is 2014 for Medicare, and 2016 for Medicaid.
- Question: The state can make this more cumbersome, but not less. Is that right? Staff response: Yes, the state can apply to CMS to move MU criteria in the realm of public health from the menu set to the core set. CMS advises states to be careful about adding additional MU criteria that may impair people's ability to get there. A process to weigh these questions is being developed and recommendations will be made to HITOC.
- Question: Can you explain the 90-day requirement in the 1st year? Staff response: within the 1st year you only have to meet the MU criteria for 90 days, not the whole year in order to receive incentive payments for 2011.

Temporary Certification Final Rule

- CMS will quickly being the process for temporary certification, ATCB's (Authorized Testing Certification Body's).
- Vendors will need to request the temporary criteria and will have to be re-certified under the

permanent criteria.

- ONC indicated having received 30+ applicants so far. As they grant the certifications, they will post them on the website. A vendor could apply; just not certify themselves or any board members.

ONC Program Information Notice (PIN)

- We are closely in coordination with the departments within the agency of DHS, OHA, CAF, SPD, and Public Health.

Office of Health Information Technology (OHIT)

- Public Health, Behavioral Health, Long Term Care programs, and the State Hospital are operating very independently. The PIN will offer guidance to help coordinate these efforts of centralized health information technologies.
- OHIT to establish sub committees formulating a strategic vision plan for HIT across the state.
- Oregon Health Authority to govern shared services for HIT.

Ex-Officio Appointments to HITOC – Steve Gordon (Time code 50:04)

Refer to slide deck, slide 13

- It would be beneficial for HITOC to have the Medicaid and Public Health leadership at this table with us to help with coordination.
- Program directors are: Judy Mohr Peterson, for Division of Medical Assistance Programs, and Dr. Melvin Kohn, Division of Public Health.
- HITOC members vote to establish the directors of Medicaid and Public Health to become permanent ex-officio, non-voting members of HITOC. All in favor of the vote; approved without any further discussion.

Community Meetings and Public input – Carol Robinson (time Code 56:25)

Refer to meeting materials: " Compilation of Public Input by Theme"
Refer to slide deck, slide 14

- From June 17 through July 14, 2010, the HIE Planning Team received, collected, reviewed, and analyzed over 150 comments from more than 100 individuals and organizations on the Draft HIE Strategic Plan.
- Feedback was received via a diversity of forums, including the HITOC Public Meeting in Portland (June 17), five community meetings held across the state, a public webinar (July 8), and via e-mail.
- A full list of individual comments and feedback has been compiled and will be made a public document after review by HITOC members.
- An ad-hoc Advisory Panel composed of 5 HITOC members reviewed the public input and gave feedback to the HIE Planning Team on how to incorporate it into a revised Draft Strategic Plan.
- While several public comments resulted in changes to the Strategic Plan, others will be given to the appropriate workgroup, panel, or other forum to inform Phase 1 planning activities.

Strategic and Operational Plan Presentation – John Hall (time code 01:15)

Refer to meeting materials: "Brief on Changes to Strategic Plan, Final"
Refer to slide deck, slides 15-18

- Overview of revisions made to the June 17th draft strategic plan. Revisions were based upon public input & HITOC Advisory Panel feedback, ONC PIN, and suggestions from the planning team. Please see written "Brief on changes to strategic plan" for further explanation of all revisions.
- Question: Is "NHIN direct" a dependency? Staff response: The NHIN Direct has protocols and modules, providing pilots across the country with real scenarios to see if it works. There are a number of companies that are testing this out and will have more information to provide to us

before the end of 2010. There are other options if the "NHIN Direct" approach does not work like, a secured e-mail type of solution, or a central web portal

- Question: can you explain "push" in the light of consent? Staff response: Individuals will be given the option to completely opt out of the health information exchange, unless the information falls into one of Oregon's Specially Protected Health Information Categories, where there would be a need for opt in consent to share that information. The Legal and Policy Workgroup will be tasked with reviewing the proposed opt out consent model, assessing specially protected health information and consideration of potential legislation.

Public Comment Regarding Plans – Rick Howard (time code 1:31:30)

Andrea Meyer (American Civil Liberties Union of Oregon):

- Thanks for the additional language in the cover letter on communities of color and other disenfranchised groups.
- Would like additional members, including individuals from consumer advocacy groups and privacy experts on the Consumer Advisory Panel.
- Often public forums can be influenced by who actual attendees as well as what information is provided at those meetings. The ACLU is always happy to provide info at those public meetings.
- A handout was provided from the Privacy Rights Clearinghouse (www.privacyrights.org) of data breaches in 2010, in the medical field only. No breaches have been identified in Oregon as of August 2010. Oregon has been identified in previous years for breaches. Copies of the Privacy Rights Clearinghouse report are available to the public upon request.
- Regarding the consent opt out w/exceptions: While it appears to identify the patient's right to opt out, with exceptions for Specially Protected Health Information (SPHI), the work of the Legal and Policy Workgroup in handling of SPHI and consent options will take a mindful approach and continue to ensure that SPHI and all existing protections are respected.
- The Legal & Policy section of the strategic plan does not adequately address remedies and patient recourse when privacy and security policies aren't followed.

Joe Greenman, Legal Counsel, Oregon Health Care Association (OHCA):

- Written testimony provided by Joe Greenman. Copies are available to the public upon request.

Dr. Thomas Clark:

- He is looking for the goals and expectations of all classes of parties involved. The operational plan is fine as it stands, but he recommends pulling in someone from industry to look at the software and support for doing this. In his work with EHRs, he is not aware of any products that adequately describe any medical processes or clinical procedures, because the EHR is a collection of digital records. There is no set of necessary and sufficient conditions to make the EHR legally admissible.

Pat Wolfram, Ignis Systems:

- He applauds our decision to begin with a push system. We'll need to deploy 70,000 EMR systems a year over the next three years. The sooner this plan is laid out, the sooner you'll have physicians who can adopt

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Discussion and Vote – **Rick Howard** (Time code: 00:00:00)

HITOC discussion on strategic and operational plans

- Gordon: reported he spoke with Senator Ron Wyden to share the work HITOC has done and the pride we have in our plan. Senator Wyden was very appreciative to learn more about it and desires to hear more. He and his policy director (Emily Katz) remarked on the public input process. Senator Wyden is supportive of the plan.
- Fraser: he appreciates the staff and the work that has gone into developing the strategic and

operational plans. It is not a perfect plan, but it is outstanding and exceptional. We should remember that this is a plan, and the ONC will probably issue another PIN requiring HITOC to adjust its strategies, many times.

- Brown: stated he appreciates Dr. Fraser's comment about the plan being a starting place. Having the plan and approving the plan is a milestone, but it's just the beginning. He appreciates the staff work that went into this.
- Widen: he also appreciates the staff work and sees it as the beginning. HITOC is on the right track.
- Hockett: will the preamble be submitted to ONC? Staff response: that is a question for HITOC to answer; Decision: HITOC would like to submit it to ONC as part of our plan. He thinks it should be submitted because it addresses health equities. Comments that action taken on ex officio members should included in the plan because it strengthens our commitment to coordinating with public health and Medicaid. Thanks the stakeholders across the state for participating in the forums and in providing feedback.
- Stanphill: this entire process has been amazing and is impressed with all of it. She's been very interested in what the consumers have wanted, and thank the staff for the public input process.
- Laper: acknowledges the staff and colleagues on all the work. It is an excellent plan and she looks forward to helping consumers and Oregonians understand what the plan means for them and how it affects them.
- Howard: from the perspective of 13 years experience in State government, he commends the pragmatism and realism in our strategic approach in a very volatile environment. He commends the Strategic Workgroup in having developed a very resilient approach. The preamble sets a philosophical tone to the rest of the plan: patient-centered; addresses health equities and other aspects of privacy and security. Question: if HITOC adds language about the ex officio members being added to the plan, then are HITOC members voting on the plan as it stands as well as proactively voting on this added language? Staff response: yes that it correct.
- Co-chair Rick Howard calls for a vote: all in favor of the vote, approved without any further consideration.
- By unanimous vote, HITOC votes to approve Oregon's Strategic and Operational Plans for Health Information Exchange.

Workgroups and Panels – Chris Coughlin (Time code: 00:15:40)

Refer to meeting materials: "HIE Planning Groups, Phase 1" and "HITOC HIE Workgroup Overview"
Refer to slide deck, slide 19

- Concern is expressed that the panels will be less active than the workgroups. Staff response: workgroups will be subject matter experts and will develop specific policy proposals; the panels will review those recommendations in accordance to charters and responsibilities and then provide their input to HITOC for consideration. The panels will also be expected to communicate and inform key constituents and stakeholders.
- Comment: the panels will be doing work, valuable work, so why not also call them workgroups Staff response: workgroups may be temporary, but that the panels are envisioned to continue. The distinction is in their charter. This will be taken into consideration as the charters are developed.
- Question: who do we envision being on the Consumer Advisory Panel? Consumer advocates, or actual consumers? Staff response: we are hoping for a mix, recognizing the potential challenge in recruiting actual consumers. A key strategy in recruiting members for the Consumer Advisory Panel will be engaging in outreach to individual consumers as feasible.
- Comment: would definitely like to see a mix on the panel, not just consumer advocates whose

job it is to do this, but regular consumers.

- Comment: The panel would have more credibility with a mix of advocates and consumers.
- Question: can we ask demographic info on the application to make sure we get a diverse mix? Staff response: it is important for us to make a statement encouraging diverse applicants, but not ask that they provide demographic info.

Public input (Time code: 01:00:10)

Andrea Meyer (American Civil Liberties Union of Oregon):

- Offered a number of comments related to the compilation of public comments received on the strategic plan. She urges considering privacy or privacy experts on the consumer panel and expanding the number on the consumer panel.

Dr. Thomas Clark:

- Commented on the Legal & Policy Workgroup. Commented that the naming convention being used for this particular workgroup is potentially confrontational, specifically the word "legal" but that "policy" is less so. For consumer engagement, recommended developing a simple basic application, suggested using an Android Smartphone.

Chris Apgar:

- Written testimony provided by Chris Apgar. Copies are available to the public upon request.

Mike Saslow:

- Commented that if HITOC really would like consumer participation, additional thinking about who is going to pay for transportation expenses, if we want geographical representation should serve as an important consideration.
- Medicaid HIT Steering Committee: there needs to be an external participant on the steering committee, not just the agencies involved.

Updates – Carol Robinson (Time code: 01:18:50)

Refer to slide deck, slide 19

- Update on Oregon Medicaid HIT project
- Update on 2nd round of Beacon applicants

Closing Comments – Steve Gordon and Rick Howard (Time code: 01:28:00)

- Meeting adjourned