

# State Health Policy to Advance Health IT

An Overview of State Legislative Strategies

January 28, 2009

Sponsored by  
The State-Level HIE Consensus Project

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National Conference of State Legislatures

# The State-level HIE Consensus Project

- Began in 2006
- Targets key state-level roles, functions, issues, strategies for advancing statewide health information exchange (HIE)
- Supports field research, learning community, consensus-building
- Produces best practices, support for state-level HIE efforts
- State-level HIE Leadership Forum launched in 2008
- Developing collective state-level voice for HIE development to serve statewide public interests, state health care reform goals

# The SLHIE Leadership Forum

- A learning community of state-level HIE leaders
  - Public and private sector, across stages of development
  - Guided by SLHIE Consensus Project Steering Committee (13 states; HIMSS, NCSL, eHealth Initiative as project liaisons)
- Activities
  - Shared learning
  - Dialogue, networking, identifying issues and input
- 2009 1<sup>st</sup> quarter priorities
  - Support SLHIEs to prospectively respond and manage HIE development as part of federal and statewide health care reform priorities, politics and strategies.
  - Develop targeted implementation guidance to support SLHIE work
  - Continue to develop the Forum as a learning community and source of state-level input

# Today's Program

- 1<sup>st</sup> in a series of Webinars
- Taking advantage of the expertise and recent report by SLHIE Project Partner NCSL
- Timely opportunity to consider SLHIE roadmap issues and strategies:
  - Aligning with state health policy goals
  - Leveraging legislative and executive branch support
  - Responding to federal Health IT legislation and other emerging directions/resources via ONC, agencies

# Program Outline

- Background
- Review of state health policy drivers and trends related to Health IT
- Overview of legislative strategies and case studies
- Q& A and Discussion
  - Impact of fiscal crisis and pending federal stimulus efforts on state-level strategies? Shift in trends?
  - Questions, information needs?
  - Opportunities for further discussion?



# State Health Policy and Health Information Technology

An Overview of State Legislative Strategies

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# Background

- About NCSL
  - Bipartisan organization made up of all the state and territorial **legislatures**
  - The problem solvers for state legislatures.
- NCSL mission is:
  - To improve the quality and effectiveness of state legislatures
  - To promote policy innovation and communication among state legislatures
  - To ensure state legislatures a strong, cohesive voice in the federal system



# NCSL's Health IT Activities

- Project HITCh
  - Public-Private partnership with NCSL Foundation (AARP, BCBSA, EDS, HIMSS, Johnson and Johnson, MAXIMUS and Quest Diagnostics)
  - Goal: To increase legislators' knowledge and leadership in health IT.
- Activities
  - Technical assistance to states
  - Educational sessions for legislators
  - Legislative tracking
  - Platform for states in national activities
  - Special projects: i.e., State-Level Health Information Exchange Consensus Project

# Health Information Technology 2007 and 2008 State Legislation

- NCSL report released December 2008
  - Sponsored by the National Governor's Association under the auspices of the State Alliance for eHealth
  - Financed through HHS, ONC
- One of a series
- Purpose to identify trends, point to key examples
- Key resource: NCSL's searchable legislative database  
[http://www.ncsl.org/programs/health/forum/Hitch/HIT\\_data\\_base.cfm](http://www.ncsl.org/programs/health/forum/Hitch/HIT_data_base.cfm)
- The full report is available at  
[http://www.ncsl.org/print/health/forum/HIT\\_Enacted.pdf](http://www.ncsl.org/print/health/forum/HIT_Enacted.pdf)

# Information Overview

- Report findings drawn prior to 2009 seismic shift in the environment
- Considering current relevance
  - How are states positioned to respond to economic stimulus resources and requirements?
    - Organized state-level HIE leadership
    - Coordination of HIT/HIE efforts
    - Alignment of state – federal HIE policy



# States and Health IT

- States view health IT as a vital tool to increase quality and decrease costs
- States are actively working to address barriers to health IT adoption and are using various policy levers to promote its adoption and use
  - Planning
  - Targeted financing initiatives
  - Protecting privacy in the digital age
  - Promoting health information exchange
  - Advancing adoption and use

# State Legislation

- Over 370 bills with health IT content were introduced in 2007 and 2008
- Of these 134 bills passed in 44 states and the District of Columbia

# Planning

- Many states have taken a strong role in creating study commissions
- Bringing together public and private stakeholders helps build trust and support for a roadmap
- Legislation to convene study commissions typically:
  - defines membership
  - sets tasks that include inventorying existing projects, detailing future needs and resources
  - recommending necessary state policy changes to facilitate health IT
  - develop a sustainable interoperable statewide roadmap that addresses privacy and security.

# What are States Financing?

- Start-up Funding
  - Study commissions, state health information exchanges, infrastructure, health IT in state facilities or in facilities with underserved populations, for example.
- Operational Funding (largest share of spending)
  - health IT in health insurance programs (Medicaid, state employee health) or contracted services, public health activities (bio-surveillance, registries), operating entities that set state health IT policy, for example.
- Support for Private-sector Investments
  - Grants, revolving loan funds, tax incentives, financial incentives in contracts with providers, for example.

# Level of Funding Unclear

- Beyond HIE and EHR, little state consensus on what counts as health IT. States disagree on inclusion or exclusion of telemedicine, bio-surveillance and MMIS.
- Hard to count dollars because a significant portion of funds are inside budgets for program operations.
- What is the level of private spending on health IT in the state?



# Targeted Financing Initiatives

- Many states are investing in health IT to gain benefits for the system as a whole
- State strategies to achieve a critical mass of health IT adoption must address the current misalignment of incentives
  - States do not want to replace funds from private sector
  - Targeting funding toward groups that otherwise could not adopt health IT, such as community health centers, small practices and rural providers
  - Public health is an additional area that requires state funding
- States see a role for themselves in allocating the costs of new systems across interested groups
  - What is the ROI for the state financially and in terms of improved health outcomes?

# Targeted Financing Initiatives

- Study commissions
- Appropriations
- Grants: States target groups otherwise not able to afford health IT such as community health centers, small practices and rural providers.
  - Minnesota HB 1078 (2007) gives preference to projects benefiting providers located in rural and underserved areas which have an unmet need for the development and funding of electronic health records. Grant funds awarded on a three-to-one match basis with maximum grant of \$900,000.
- Tax incentives
  - Wisconsin SB 40 (2007) creates a tax credit for providers who purchase electronic medical records. Providers can claim up to 50% of the cost of the system with a maximum of \$10 million a year.

# Health IT Fund

- At least three states (MA, MO, VT) have established a fund for health IT development.
- These funds usually pool public and private funds to increase adoption of health IT.
- Vermont Health IT Fund (HB 891, 2008)
  - Funds raised through a 0.199% quarterly fee on all health insurance claims paid by insurers and third-party administrators for seven years.
  - The health insurer fee is expected to raise around \$32 million over the next seven years.
  - Funds will be used to help non-affiliated providers adopt EHRs and will assist in the creation of a statewide health information exchange.
  - The state estimates a net savings of \$320 million over 10 years.

# Revenue Sources

- States are looking at various means to fund health IT.
- Medicaid and federal transfers dominate, but the state share is large.
- States are looking at creating dedicated funding sources but few have so far. They view health IT as a way to create net savings.
- Revenue sources in play but not generally adopted: dues, bonds, insurer assessment, user fees.

# Updating Privacy Laws to Allow for HIE

- States are taking varying approaches to allowing for HIE
  - Minnesota (HB 1078, 2007)
  - Rhode Island (SB 2679, 2008)
  - Nevada (SB 536, 2007)
  - Oklahoma (SB 1420, 2008)
  - Wisconsin (SB 417, 2008)
- A number of other states considered bills on privacy and HIE in 2008 (NH, LA, NM)
- A handful of states have data breach notification laws that include health information.

# Minnesota

- Allows for the creation of record locator services (RLS).
- RLS can be created without patient consent however consent is required to access patient data.
- Patient have the right to opt-out of RLS in total or to have specific provider contacts excluded from the RLS.
- Only providers can access information in RLS.
- RLS must maintain an audit log.

# Minnesota

- The law allows one provider to represent patient consent electronically to another provider in order to obtain their medical records in real time.
- Provider must have a signed and dated consent from the patient authorizing the release.
- Department of Health created a standard consent form to release health information. Providers are not required to use the form but must accept it.

# Minnesota

- Providers who violate provisions of statute can face disciplinary action from the appropriate licensing board or agency.
- Any person who does the following and causes an unauthorized release of data is liable to the patient for compensatory damages plus cost and reasonable attorney fees
  - (1) negligently or intentionally requests or releases a health record in violation of sections 144.291 to 144.297;
  - (2) forges a signature on a consent form or materially alters the consent form of another person without the person's consent; or
  - (3) obtains a consent form or the health records of another person under false pretenses.
- RLS are liable for compensatory damages plus costs and reasonable attorney fees for inappropriate disclosures of data.



# Rhode Island

- Establishes a state-wide HIE under state authority.
- Hybrid architecture
- State law requires the HIE and RHIO to abide by the terms of HIPAA business associate agreements.



# Rhode Island

- Requires a patient to opt in for his or her health information to be included in the HIE.
- If a patient opts in they can choose which providers can access their data.
- For those who opt in authorization is not required for release to
  - public health authorities for specified function;
  - to health care providers for diagnosis or treatment in an emergency and;
  - to the RHIO for operation and administrative oversight of the HIE.
- Requires the RHIO to create an authorization form for access to, or the disclosure, release or transfer of confidential health care information from the HIE.

# Rhode Island

- Patients shall have the following rights
  - (a) To obtain a copy of his or her confidential health care information from the HIE;
  - (b) To obtain a copy of the disclosure report pertaining to his or her confidential health care information;
  - (c) To be notified of a breach of the security system of the HIE;
  - (d) To terminate his or her participation in the HIE and
  - (e) To request to amend his or her own information through the provider participant.
- Provides immunity to health care providers who rely in good faith upon information provided through the HIE in the treatment of a patient.
- The bill also establishes penalties for violations of the statute.

# Nevada

- HIPAA covered entities that electronically transit individually identifiable health information in compliance with HIPAA provisions are exempt from more stringent state laws.
- The bill allows individuals to opt out of electronic transmission of individually identifiable health information with exceptions for Medicaid and SCHIP patients and when required by HIPAA or state law.



# Oklahoma

- Requires the State Board of Health to adopt and distribute a standard authorization form for the exchange of health information. Use of the form is not required.
- Exchanges of health information under the authorization form, when used in accordance with the Board's instructions, shall be immunized from liability under state privacy and privilege laws that may arise from the exchange of such information.



# Wisconsin

- Changes the state health privacy laws to facilitate HIE.
- Adds diagnostic test result and symptoms to the list of elements that can be exchanged without written consent from a patient.
- Allows for the sharing of data with any health care provider involved in the patient's care. Previously data could only be shared with providers in a related health care entity.
- Eliminates more stringent state requirements to document all disclosures of health information.

# Wisconsin

- Permits a health care provider to release a portion of a patient health care record to:
  - Any person, if the patient or a person authorized agrees to the release of that portion:
- Any of the following, if the patient or person authorized by the patient are unable to, or if an emergency makes it impracticable to obtain an agreement, and if the health care provider determines the release is in the patient's best interest:
  - To a member of the patient's immediate family; a relative; a close personal friend; or an individual identified by the patient; that portion of the record that is directly relevant to the involvement of that person in the patient's care:
  - To any person, that portion of the record that is necessary to identify, locate, or notify a member of the patient's immediate family or another person that is responsible for the care of the patient concerning the patient's location, general condition, or death.

# Promoting HIE

- An EHR in every pot is not enough
- Building off national standards states are taking various approaches to ensuring that interoperability is achieved
- *Use state agency purchasing requirements*
  - Virginia requires state agencies to purchase interoperable health IT systems. Any grantee receiving state funds must also purchase interoperable systems.
- *Require purchase of certified systems*
  - Minnesota requires EHRs to be certified by CCHIT or its successor.

# Promoting HIE

- Getting the data flowing
- *Adopt standards and require use for HIE*
  - The Utah Dept. of Health can adopt standards for HIE. Payers and providers must use these standards to exchange data between health care systems.
- *Create or designate a state-level HIE*
  - Public-private initiatives (RI)
  - State government (TN)

# Advance Adoption and Use

- Mandates
  - Minnesota's 2015 EHR and 2011 e-prescribing capability mandated for all providers
  - Massachusetts hospitals and community health centers are required to have CPOE by 2012 and EHRs by 2015 as a standard for facility licensure
- Incentives
  - Massachusetts loan repayment
  - Tax credits
  - Pay for participation/performance

# Advance Adoption and Use

- CON Law
  - States are finding creative ways to leverage the CON process
- Build Professional Capacity
  - Funds for training
  - Require health IT capacity
- Facilitate resource pooling
  - MiHIN Resource Center provides guidance and support to regional health information exchanges in Michigan *Don't reinvent the wheel*

# Advance Adoption and Use

## Leveraging State Purchasing

- Medicaid
  - 37 states have e-health activities in Medicaid\*
  - Targeted reimbursement
- State Employee Health Plans
  - Minnesota plan requires e-prescribing in 2011
  - CalPERS initiative with CalRHIO
  - 8 states have PHRs\*
- Medicaid and SEHP are paying a flat per member per month charge to participate in the Michigan capital area RHIO

# State Leaders

- Minnesota
  - 2015 EHR and 2011 E-prescribing mandate
  - Implementation plan
- Vermont
  - Health IT fund
- Massachusetts
  - EHR mandate for hospitals and community health centers
- New York
  - HEAL Grants
  - Accreditation study

# Outlook for states

- Continued focus on health IT
- Economic situation?
- Stimulus package



# Summary

- Monitoring of state legislative efforts to continue
- Key emerging issues
  - State-level focus and accountability for statewide interoperable infrastructure (i.e. HIT adoption and HIE implementation)
  - Strategies to designate state-level HIE entity leadership for coordinated statewide roadmap
  - Strategies linking Medicaid and SLHIE
  - Other?

# Discussion

- Impact of fiscal crisis and pending federal stimulus efforts on state-level strategies?
- Shift in trends?
- Forum member strategies?
- Questions, information needs?
- Opportunities for further discussion?

# Thank You!

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