

# ***Privacy and Security Report***

**Audio Seminar/Webinar**  
***August 28, 2007***

***Practical Tools for Seminar Learning***

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## Faculty

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### **Susan M. Christensen, Esq.**

Susan Christensen is a senior public policy advisor in Baker Donelson's Washington, D.C. office and a member of the Firm's Federal Public Policy Group with a focus on health public policy matters. From 2000 to 2004, Ms. Christensen served as Congresswoman Nancy Johnson's Senior Health Policy Counsel, managing public and private health care issues, including Medicare, Medicaid, health information technology, liability reform, private market health insurance reform, the uninsured, long-term care insurance and mental health parity. Prior to joining Baker Donelson, she most recently served as senior advisor for the Agency for Healthcare Research and Quality (AHRQ) in the U.S. Department of Health and Human Services, where she was responsible for managing key policy issues related to AHRQ's overall health IT portfolio. Ms. Christensen's experience also includes working as a health policy consultant and as Public Services Director at BearingPoint, Inc., a leading developer of health information system infrastructure strategy and solutions.

Ms Christensen has recently received the Director's Citation, Agency for Healthcare Research and Quality and is a contributor to "Improving Care Coordination Through Physician/Disease Management Collaboration" at Johns Hopkins. She received the Joseph P. Kennedy, Jr. Foundation Parent Public Policy Fellowship in 1997. Susan was a member of the Services Redesign Steering Committee, State of Nebraska Partnership and the State Children's Mental Health Steering Committee, Lincoln, Nebraska from 1994 to 1997.

Susan earned a JD at the Creighton University School of Law, and an A.B Econ from the University of Michigan.

### **Harry B. Rhodes, MBA, RHIA, CHPS, CPHIMS, FHIMA**

Harry Rhodes, MBA, RHIA, CHPS, CPHIMS, FHIMA, Director of Practice Leadership for the American Health Information Management Association (AHIMA). In his role as director, Harry serves as a resource to AHIMA members, outside organizations, and the media on health information professional practice guidelines through articles, publications, and consultations.

Prior to joining AHIMA in 1996, Harry served as Director of Medical Information Services at Columbia/HCA Presbyterian Hospital in Oklahoma City, OK. He has also served in other HIM roles, including educator, independent consultant, quality assurance, and utilization review, and department manager.

Mr. Rhodes is actively involved with a number of other professional organizations. He previously served as co-chair to the HL-7 Medical Records/Information Technical Committee, co-chair for numerous other HL7 sub-committees, and as President of the Chicago Area Health Information Management Association and the Oklahoma Health Information Management Association. Rhodes is also the recipient of the Illinois Health Information Management Association's 2003 Professional Achievement Award and the 2003 Chicago Area Health Information Association Distinguished Member Award.

He received a Bachelor of Science degree in HIM from The University of the Incarnate Word in San Antonio, TX and a Masters in Business Administration from Wayland Baptist University in Plainview, TX.

## Table of Contents

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Disclaimer .....	i
Faculty .....	ii
Privacy and Security Contract	
Purposes .....	1
Stakeholder Participation in Assessment of Variation .....	2
Some Lessons from the Process .....	2
Factors Affecting Variations, Solutions and Improvements .....	3
Social Capital .....	3
Key Issues in Assessments of Variations.....	4
Major Categories of Proposed Solutions.....	4
Challenges/Solutions .....	5
Governance Models .....	7
Implementation .....	8
Challenges/Solutions .....	8
Outreach, Engage, and Education.....	9
Practice and Policy Guidance .....	9
Final Report – National Recommendations.....	10
Moving Forward .....	10
Regular Formal Communication .....	11
Contact Information .....	11
Audience Questions	
Appendix .....	15
CE Certificate Instructions	

## ***Privacy and Security Contract***

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- ♦ In September 2005, AHRQ awarded Privacy and Security Contract, managed in collaboration with ONC
- ♦ Overall contract managed by RTI International
- ♦ 21-month period; increased to \$17.4 million overall
- ♦ Under its HISPC initiative, RTI subcontracted with 33 states and Puerto Rico to:
  - Identify within the state business practices that affect electronic health information exchange
  - Propose solutions and implementation plans
  - Collaborate on regional and national meetings to develop solutions with broader application
- ♦ Provide final report – July 2007
- ♦ Available at [healthit.ahrq.gov](http://healthit.ahrq.gov)

1

## ***Contract Purposes***

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- ♦ Identify variations in organization-level business privacy and security policies and practices that affect electronic clinical health information exchange
- ♦ Preserve privacy and security protections as much as possible in a manner consistent with interoperable electronic health information exchange
- ♦ Incorporate state and community interests, and promote stakeholder identification of practical solutions and implementation strategies through an open and transparent consensus-building process
- ♦ Leave behind in states and communities a knowledge base about privacy and security issues in electronic health information exchange that endures to inform future HIE activities

2

## ***Stakeholder Participation in Assessment of Variation***

Total Participants	3,811	112
<b><i>Stakeholder Group</i></b>	<b><i>N</i></b>	<b><i>AVG</i></b>
Providers	1,630	48
Technology and Health Information Experts	582	17
Consumers	458	13
Other Government	243	7
Public Health Agencies/Departments	213	6
Employers	198	6
Legal Counsel/Attorneys	181	5
Medical & Public Health Schools/Research	140	4
Payers	122	4
Law Enforcement and Correctional Facilities	37	1
Foundations/Other Policy Consultants	4	<1

3

## ***Some Lessons from the Process***

- ♦ Trust involves more than compliance with privacy and security laws and regulations
- ♦ The decision process on policies and implementation appears to be just as important as the final policy decision and the technology
- ♦ Consumer involvement is difficult to secure but we heard constantly that it is needed to reflect their interests adequately and serve as a check on cultural competence
- ♦ There will be trends and policies that will have regional or national application

4

## ***Factors Affecting Variations, Solutions and Implementation***

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- ◆ Degree of adoption of HIE
- ◆ Health care market forces in state
- ◆ Legal and regulatory conditions related to health information
- ◆ Demographic composition of the state



5

## ***Social Capital***

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**“Before an HIE can even begin to think of operations, it must undertake the arduous task of realigning community interests and building a new “radius of trust” that encompasses the many and oftentimes complex mélange of preferences and competing priorities among multiple parties.”**

***HEALTH INFORMATION EXCHANGE: FROM START UP TO SUSTAINABILITY, [www.ehealthinitiative.org](http://www.ehealthinitiative.org)***

6

## ***Key Issues in Assessments of Variations***

- ◆ Interpretation and Application of Consent
- ◆ HIPAA privacy rule interpretations and applications
- ◆ HIPAA security rule interpretations and applications
- ◆ Security
- ◆ Trust in security
- ◆ State laws
- ◆ Networking issues
- ◆ Linking data from multiple sources to an individual
- ◆ Interstate issues
- ◆ Disclosure of PHI
- ◆ Cultural and business issues



7

## ***Major Categories of Proposed Solutions***

- ◆ Practice and Policy
  - Interpreting HIPAA privacy rule
  - Uniform consent
- ◆ Legal and Regulatory
  - State laws – finding and interpreting and application to HIE
  - Intersection with federal law
- ◆ Technology and Standards
  - Data security; four As: authentication, authorization, access and audit
  - Transmission
  - Patient identity management
  - Segmenting data
- ◆ Education
- ◆ Implementation of Governance of Solutions



8

## ***Challenges/Solutions***

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Challenge: Obtaining and Managing Patient Consent

**Broad variation in the requirements for obtaining and managing patient consent and authorization for information disclosures**

Solution: 8 states are working on reducing variation related to consent management

- **Standardize patient consent process**
- **Harmonize consent language that addresses opt-in/opt-out issues across the state**
- **Implement consent management process; develop use cases that drive HIE transactions**
- **Create guiding principles for consent that can be used to update state law**
- **Model consent forms**

9

## ***Challenges/Solutions***

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Challenge: Variation created by state privacy and security laws

**State law governing privacy and security is scattered, fragmented, sometimes inconsistent or contradictory within a state, and frequently does not apply sensibly to electronic exchange.**

Solution: 9 states implementing solutions related to state law

- **Producing a catalog of existing relevant statutes and administrative regulations**
- **Developing a road map of current P&S laws/statutes**
- **Developing model legislation to harmonize on multistate issues such as consent**
- **Completing a legal analysis to determine what changes need to be made to ensure privacy and security**
- **Reforming state privacy laws to address electronic HIE**
- **Drafting legislation for 2008 session**

10

## ***Align State and Federal Laws/Regulations***

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- ◆ **Produce and Publicize Coordinated Guidance**
- ◆ **Establishment of a Single State Organization**
- ◆ **Provide Use Case Examples**

11

## ***Challenges/Solutions***

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Challenge: Variation in Methods of Implementing 4 A's

**Need for consensus on standards for authentication, authorization, access controls and information audits to reduce mistrust between entities**

Solution: 4 states are working on issues related to the 4A's

- ◆ **Defining minimum standards for authentication acceptable to individuals or entities participating in an HIE**
- ◆ **Defining P&S requirements for providers' role-based access and authentication**
- ◆ **Developing "solutions building block" i.e., trusted digital identities for authentication, authorization, access control, data integrity, and digital signatures**

12

## Challenges/Solutions

Challenge: Privacy and Security Oversight

**Lack of state-level authoritative governing bodies to oversee the development, adoption and enforcement of common privacy policies and security practices for HIE**

Solution: 6 states working on governance and oversight

- **Establish Governor's eHealth taskforce on Privacy and Security**
- **Create a Privacy and Security Advisory Board**
- **Establish formal work group to formulate and review P&S policy**
- **Create an umbrella organization to operationalize P&S strategies and interact with Governor's HIE Commission and the state Health Policy Authority.**

13

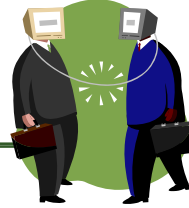
## Governance Models

- ♦ **Consistent HIE Privacy Policies and Business Practices**
- ♦ **Identify, Analyze, and Publicize HIE Success Factors**



14

## Implementation



### Data Sharing Plans

- ♦ **States: CO, IA, ME, NH, NJ, NY, PR, WY**
  - Develop a data sharing agreement for four participating entities
  - Conduct pilot of private and secure exchange using CCD; identify best P&S practices in context of CCD
  - 2-state collaboration to determine minimum common data sets for sharing mental health and public health information despite varying P&S standards
  - 2-state project to assess privacy and security issues that affect the feasibility of cross-border data exchange linking Medicaid records

15

## Challenges/Solutions

Challenge: Lack of awareness among stakeholders

**Stakeholders lack sufficient knowledge of HIT/HIE to understand implications for privacy and security; Consumers are unaware of legal protections under state law; Providers frequently do not understand state law requirements**

Solution: 14 states are developing model outreach and education programs

- Consumer and provider outreach and education
- State and multistate privacy and security summits
- Consumer advisory councils/committees
- Toolkits for educating stakeholders

16

## ***Outreach, Engage, and Education***

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- ◆ **Formal HIE Community Consultation**
- ◆ **Publicly Available HIE Framework**



17

## ***Practice and Policy Guidance***

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- ◆ **Create a Privacy and Security Body of Knowledge**
- ◆ **Create Model HIE Agreements**

18

## ***Final Report – National Recommendations***

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- ◆ **National standards**
- ◆ **Clarifications/revisions to federal regulations**
- ◆ **Funding**



19

## ***Moving Forward***

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- ◆ **State team subcontracts have been extended through December 2007 to implement a foundational component of their plan**
- ◆ **Moving toward multistate and regional coordination and collaboration**
  - **HISPC state project leaders have met with the State Alliance for eHealth Health Information Protection Taskforce**
  - **Forming multistate and regional collaborative work groups that will continue the work beyond the end of this contract**
  - **Representatives from all 56 states and territories have been invited to participate in those work groups**
- ◆ **The state teams will come together for a National Meeting in November 2007**

20

## Regular Formal Communication

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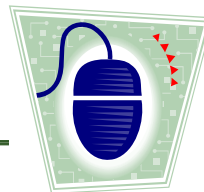
- ◆ AHIC – Confidentiality, Privacy, & Security Work Group (CPS)
- ◆ AHIC – Meetings 2X a year in different regions
- ◆ HHS – Electronic Privacy & Security Newsletter



21

## Contact Information

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*More information:*  
[healthit.ahrq.gov/privacyandsecurity](http://healthit.ahrq.gov/privacyandsecurity)  
[www.rti.org/HISPC](http://www.rti.org/HISPC)

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22

## ***Audience Questions***

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## ***Audio Seminar Discussion***

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Available to AHIMA members at  
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*Click on Communities of Practice (CoP) – icon on top right  
AHIMA Member ID number and password required – for members only*

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## ***New Hot Topics***

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### **Preparing for RAC Audits**

*Faculty: Stacie L. Buck, RHIA, CCS-P, LHRM, RCC and  
Susan Von Kirchoff, MBA, RHIA*

- **September 11, 2007**

### **FY08 ICD-9-CM Update**

*Faculty: Elizabeth R. Fisher, RHIA, and  
Mady Hue, RHIA, CCS*

- **September 18, 2007 and  
September 20, 2007**



***Thank you for joining us today!***

**Remember – sign on to the  
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**Each person seeking CE credit must complete the  
sign-in form and evaluation in order to view and  
print their CE certificate**

**Certificates will be awarded for  
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***CE Certificate***

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**"Complete Online Evaluation"**

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