

# HISPC II

The Nebraska Health Information Security and Privacy Committee II Workgroup

## **Phase Two**

### **Executive Summary Report January 1 to December 31, 2008**

**February 2009**

## HISPC II WORKGROUP MEMBERS

The HISPC II workgroup of the eHealth Council (as directed by the Nebraska Information Technology Commission (NITC)) is made up of individuals who have an interest in health information security and privacy. This diverse group brings many backgrounds and points of view together to review, discuss important issues related to this topic, and provide guidance to the public of the State of Nebraska.

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## **EXECUTIVE SUMMARY**

The Nebraska Health Information Security and Privacy Committee II Workgroup (HISPC II) was originally formed by Lieutenant Governor Rick Sheehy in 2005. The HISPC II Workgroup became a workgroup of the Nebraska Information Technology Commission (NITC) eHealth Council in January 2007. The workgroup is made up of a diverse group of individuals with an interest in health information security and privacy. The HISPC II workgroup realized the need for cross-collaboration and learning from the wide range of experts participating in studies completed by the original HISPC. Specific concepts were developed by the workgroup and used to guide the interactions and action item development.

### **Vision Statement – Workgroup is a Learning Community**

The workgroup will function as a learning community about health information technology and its uses; created and nurtured by a broad collaboration that shares knowledge widely, focused on creating a health information flow that is visible and understandable to all citizens, research-based and community appropriate, credible and focused on essentials, and provides a blueprint for improvement.

### **Guiding Values**

- ◆ We believe that each citizen owns his or her own personal health information and should be provided a reasonable opportunity and capability to make informed decisions about the collection, use, and disclosure of their individually identifiable health information beyond that permitted by law for treatment, payment, operations and public health reporting purposes.
- ◆ We believe that citizens should be involved in and partner with the designers of all health models, electronic health models, and with the devised distribution plans for these models.
- ◆ We believe in citizen involvement with the HISPC workgroup, their committees, and with other key stakeholders in the work to design a process for the creation of a health information exchange structure that maintains security and privacy of their health records.
- ◆ We believe that citizens, their health care providers, and other stakeholder organizations should be working in partnership/collaboration to ensure a statewide, interoperable, health care environment.

### **Activities of the HISPC II Workgroup**

Consumer involvement is commonly identified as a key element in the development of health information exchange. The National eHealth Initiative identified focusing on consumers as one of six common principles for effective health information exchanges. The eHealth Initiative recommends that health information exchanges enable consumers to make informed choices and address health information security and privacy needs of consumers. It is this concept that governs the two key work areas: consumer education and issues in security and privacy.

During 2008 the HISPC II workgroup formed the legal committee to complete an in-depth study of existing laws and regulations and an education committee to address the need for health information security and privacy education. As part of this work two projects were funded through the Nebraska Information Technology Council (NITC) in June of 2008. These projects included:

- ◆ Health Information Security and Privacy Consumer Education
- ◆ Health Information Privacy and Security Website.

Additionally, Nebraska participated in a multi-state collaborative project to address authentication and audit requirements as part of the national Health Information Security and Privacy Collaborative.

By focusing on consumer education as a priority this workgroup continues to move forward in developing educational materials for consumers regarding health information exchange as well as related privacy and security concerns. To aid in consumer education the HISPC II Workgroup Education Committee identified a list of references for consumers and providers (Appendix A – HISPC II Education Resources). Several members of the HISPC II Work Group were also involved in a Deliberative Discussion on Sharing Health Information Electronically. The Deliberative Discussion, facilitated by the University of Nebraska Public Policy Center, found that Nebraska consumers generally have positive views toward sharing health information electronically, although they do have some concerns about health information security and privacy.

In addition to the consumer education component, the HISPC II Workgroup Legal Committee completed an in-depth study of existing laws and regulations, with the guidance from representatives from health professions, health educators and health organizations to develop solutions on how to overcome barriers. The committee also assessed areas where confusion may exist about whether health information disclosure is permissible. The committee offers several recommendations to facilitate electronic health information exchange across the state of Nebraska:

## **Recommendations and Actions**

### **Education Committee**

Recommendations and future actions of the Education Committee include:

- ◆ Completion and sustainability of the Health Information Privacy and Security website
- ◆ Development of consumer materials
- ◆ Continued work to add education materials to the website which will be operational by late spring 2009
- ◆ Identify and/or create mechanisms for consumer engagement statewide with use of these materials. Two major foci are to assist consumers with
  - Personal health management
  - Involvement in ongoing public policy development

## Legal Committee

### Recommendations and future actions of the Legal Committee include:

Neb. Rev. Stat. 71-8401: Authorizations for Release of Information are valid for a maximum period of 180 days after date of execution. Health Insurance Portability and Accountability Act (HIPAA) permits the individual to state an expiration date or expiration event, providing the individual with greater access and disclosure rights over their protected health information.

1. Recommendation: Delete the 180-day restriction from Nebraska statute, so statute is silent, permitting the individual to determine the length of the time the authorization is valid. This change in law would eliminate the necessity for individuals to sign authorizations multiple times for continued release of information.

Action: HISPC II representatives met with staff of the Governor's Policy Research Office to discuss the 180-day restriction. Initial discussions were held with the Nebraska Medical Association (NMA) Executive Vice President and legal counsel about the potential for including the proposed revision to the authorization statute in legislation NMA planned to sponsor. However, the Department of Health and Human Services clean up bill (LB288) was deemed to be a better fit. An amendment was proposed at the hearing before the Health and Human Services Committee on Jan. 28, 2009.

2. Recommendation: Obtain feedback from the Nebraska Psychiatric Association about recommending a change to Nebraska law to be consistent with HIPAA standards. Since HIPAA provides the individual with greater rights of access, it preempts Nebraska law. Changing Nebraska law would eliminate confusion and reduce HIPAA violations when access is denied for improper reasons.
3. Recommendation: Create a model authorization, similar to the Nebraska Strategic National Implementation Process (NE SNIP) authorization contained in the Nebraska Health Information Management Association (NHIMA) Guide, to facilitate disclosure of health information. If Nebraska Department of Health and Human Services (NE DHHS) identified the form as meeting relevant regulations, then the form may be widely used and accepted. The model authorization could be placed on the eHealth Health Information Security and Privacy Committee website being developed. The model authorization could be amended if the 180 day restriction is subsequently eliminated through legislation.

Action: At the 2008 NHIMA conference on September 11, 2008 attendees were asked if a written model authorization form, supported by the eHealth Council, similar to the authorization created by the NE SNIP group and contained in the NHIMA Guide would be helpful. Sixteen attendees responded. Fifteen participants thought a standard form would be helpful. One respondent was not sure.

4. Recommendation: Identify additional ways this change can be publicized to health care professionals, such as placement on the eHealth Health Information Security and Privacy Committee website as an Frequently Asked Questions (FAQ), and communication to Nebraska health care professional associations.
5. Recommendation: The HISPC II committee will obtain a legal opinion describing how sensitive information may be used and disclosed. The HISPC II will use the legal opinion to create educational materials for Nebraska providers.