
Joint HIO Executive Panel, Technology and Legal & Policy Workgroup Meeting



Agenda

- 10:00 am Opening and Welcome – Carol Robinson
- 10:20 am Introductions
- 10:45 am Technology Overview – John Hall
- Thoughts on “final mile” approach
 - Technology to support interstate HIE
 - Ideas to Leverage Existing Opportunities
- 11:45 am Break
- 12:15 pm Working Lunch with Regional Groups (assigned seats)
- 12:30 pm Facilitated Plenary Session
- Share summaries/questions/opportunities and implications with entire group
 - Implications could include Technology, Policy, Governance, other
- 1:45 pm Break
- 2:00 pm Policy Overview
- DURSA/Data Use agreements
 - Other policies as identified
- 3:45 pm Public Comment
- 3:55 pm Closing Comments – Carol Robinson
- 4:00 pm Close

Meeting Outcomes

1. Gather feedback on:

- Technology approach to the “last mile”
- Standard data sharing agreements for Oregon

2. Identify opportunities for regional collaboration, pilot and demonstration projects

Updates

- **HIMSS 2011 National Conference in Orlando**
 - Key takeaways & hot trends
 - HIE Common Practices Survey and Project

Introductions

Regional Groups

Region 1: Portland

Paul Matthews, OCHIN
Anne Greer, Legacy Health
Shawn Messick, Multnomah County Health
Lynne Shoemaker, OCHIN
Bob Thomson, Stoel Rives LLP
John Dunn, OHSU
Patricia Van Dyke, ODS

Region 2: Willamette Valley

Greg Fraser, MVIPA
Dean Larsen, Physicians Choice Foundation
Dave Widen, Pacific University
Bob Power, Samaritan Health Services
BJ Cavnor, Cascade Aids Project
JA Magnuson, Public Health Division, OHA
Betsy Boyd-Flynn, Oregon Medical Association

Region 3: Central & Eastern

Greg Fraser, MVIPA
Dean Larsen, Physicians Choice Foundation
Dave Widen, Pacific University
Bob Power, Samaritan Health Services
BJ Cavnor, Cascade Aids Project
JA Magnuson, Public Health Division, OHA
Betsy Boyd-Flynn, Oregon Medical Association

Region 4: Southern & Coast

Bob Adams, Bay Area Hospital
Brent Eichman, DCIPA
Gwen Jimenez, Columbia Memorial Hospital
Glendora Raby, Asante Health System
Kent Achterhof, Advantage Dental
Lynne Shoemaker, OCHIN
Gwen Dayton, Oregon Medical Association

Technology Overview: John Hall

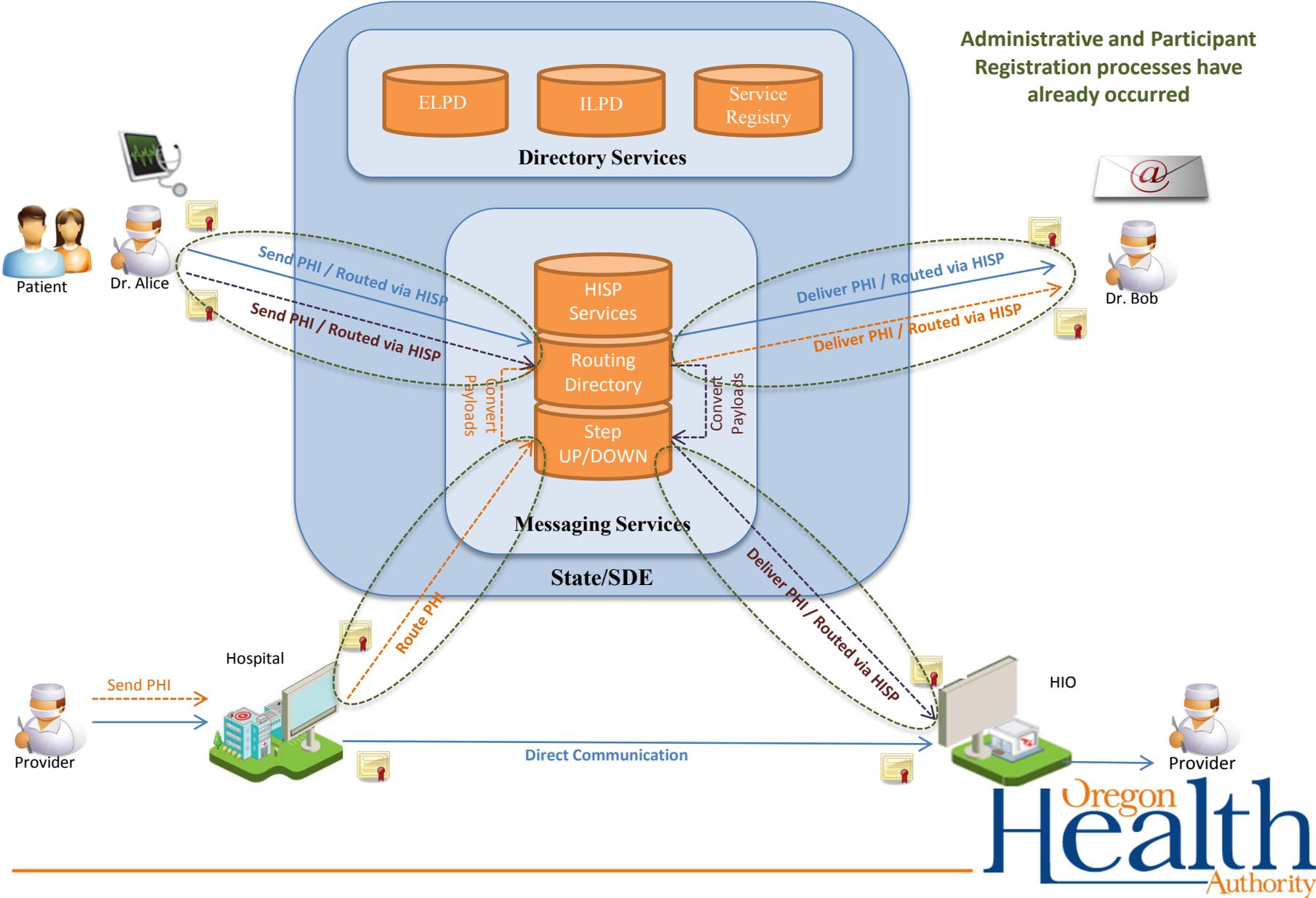
Topics

- Updates and News
- The “Final Mile”
- The White Space
- Interstate HIE
- Technology Pilots and Collaboration

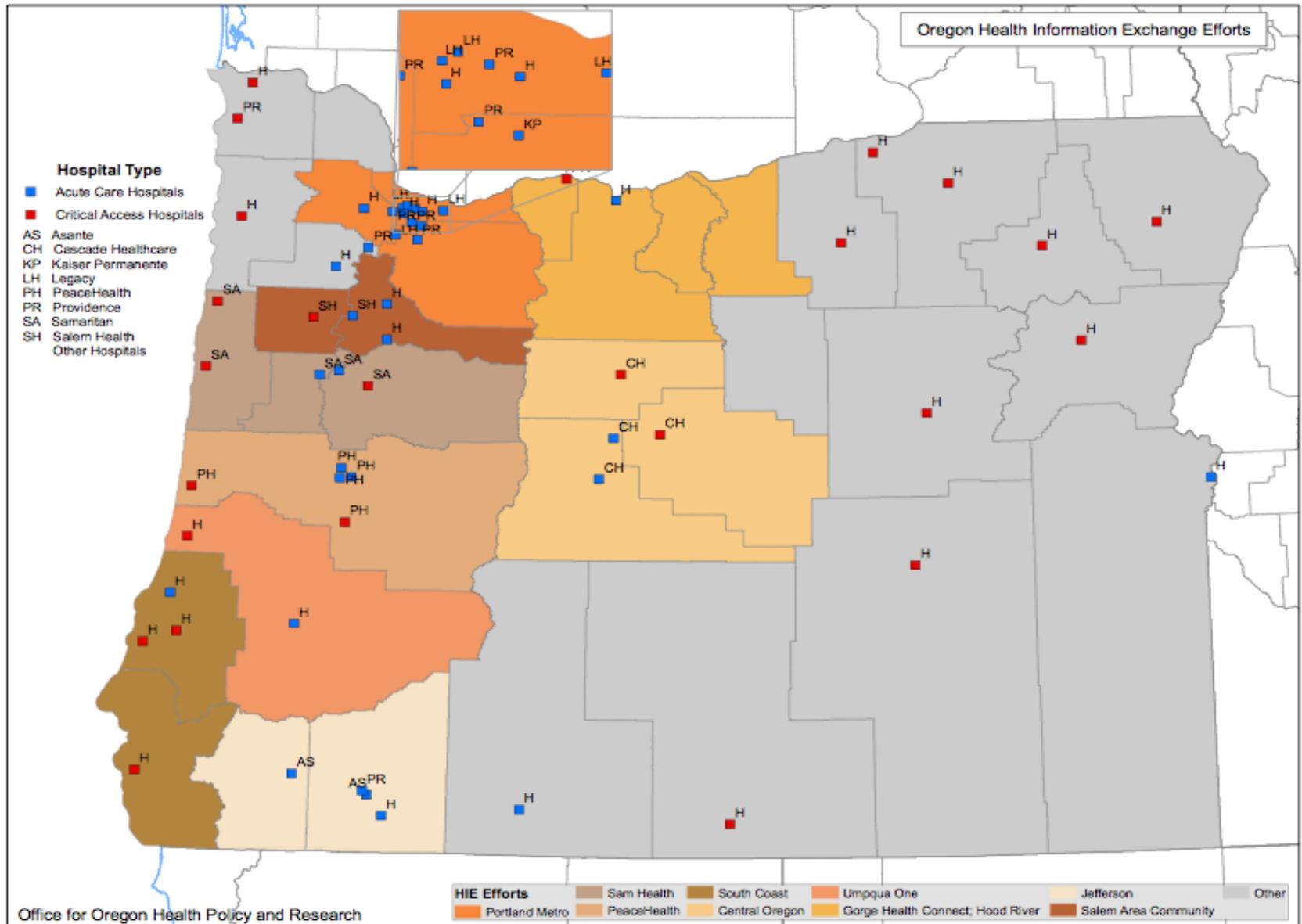
Updates and News

- ONC Health Information Technology Policy Committee has released recommendations for the Individual Level Provider Directory
- Direct Project Support Initiative
 - Direct Project Webinars
 - Direct Project Boot camp
- Highlights from HIMSS
- Laboratory and e-Prescribing Stakeholder Groups

Statewide Health Information Exchange



Oregon's HIO Landscape



The “Final Mile”

- HIOs
 - May provide HISP services to their membership
 - Be a Direct end-point
 - Use software compliant with NHIN Gateway specifications
- HIO Members
 - HIO responsible for “Final Mile”
 - Could be proprietary to the HIO
 - Connect or Direct internally
 - May connect directly to Core Services, depending on business and governance model of the HIO
- White Space
 - Predominantly small-to-medium sized entities
 - EHR with Direct capability
 - Web portal supplied by HISP
- Our technology plan supports any of the above options

Interstate HIE

- Interstate HIE will be supported with the Core Services technical architecture as previously defined
 - State operating as HISP for Interstate HIE
 - Direct Project – all other states with Direct will be able to communicate with Oregon participants
 - Step-up/Step-down – states with CONNECT can communicate with Oregon participants and vice-versa
- Do we have the appropriate mechanisms in place to connect to other states – policies, agreements and processes?

Upcoming Technology Discussions

- Content Standards for HIE Transactions
- Provider Directories
 - Will align with national guidelines, specifications still under consideration in HITSC
- Phase 2 Considerations

Technology Pilots and Collaboration

- The time has come to transition out of the planning phase and into implementation
- We are looking for organizations to participate in pilot programs that illustrate small scale, broad benefit HIE capability that could be scaled to a larger population
 - Direct Project Pilots
 - PopHealth/Quality Reporting
 - Long-term care coordination

Break

Regional Groups

- Group 1: Portland
- Group 2: Salem
- Group 3: Central & Eastern Oregon
- Group 4: Southern & Coastal Oregon

Regional Groups

Region 1: Portland

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Regional Group Discussion

1. What are shared healthcare goals within your community/region?
2. How could HIE be utilized and what types of pilot projects would help you achieve these goals? (Are there takeaways from the morning session that your region could build on to develop a pilot?)
3. Are there any particular barriers that prevent your community from embarking on these initiatives to improve healthcare?

Group Summaries

- Questions?
- Opportunities?
- Implications?

Legal & Policy

Developing Standard Data Sharing Agreements for Oregon HIE

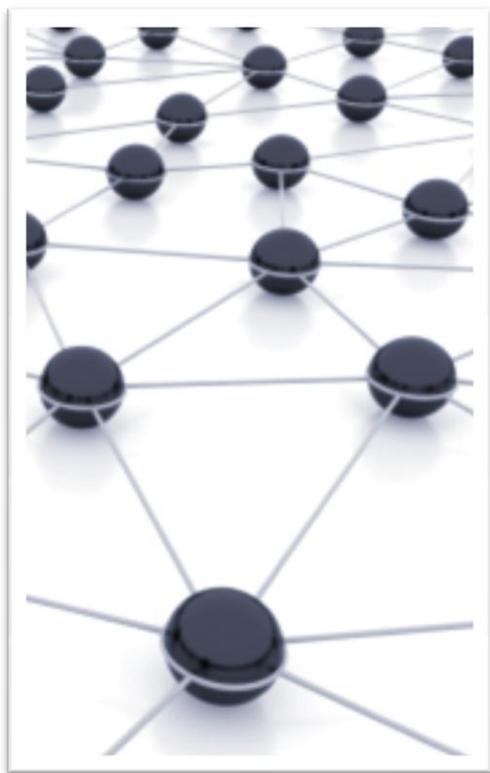
- 2 nationally-developed data sharing agreements for HIE:
 1. **NHIN DURSA**: Nationwide Health Information Network Data Use and Reciprocal Support Agreement
 2. **HISPC DSA**: Health Information Security and Privacy Collaboration Data Sharing Agreement

Why develop a common data sharing agreement for HIE in Oregon?

- Time
- Complexity
- Liability

Current NHIN Model – A Network of Networks

Confederation of trusted entities, bound by mission and governance to securely exchange health information

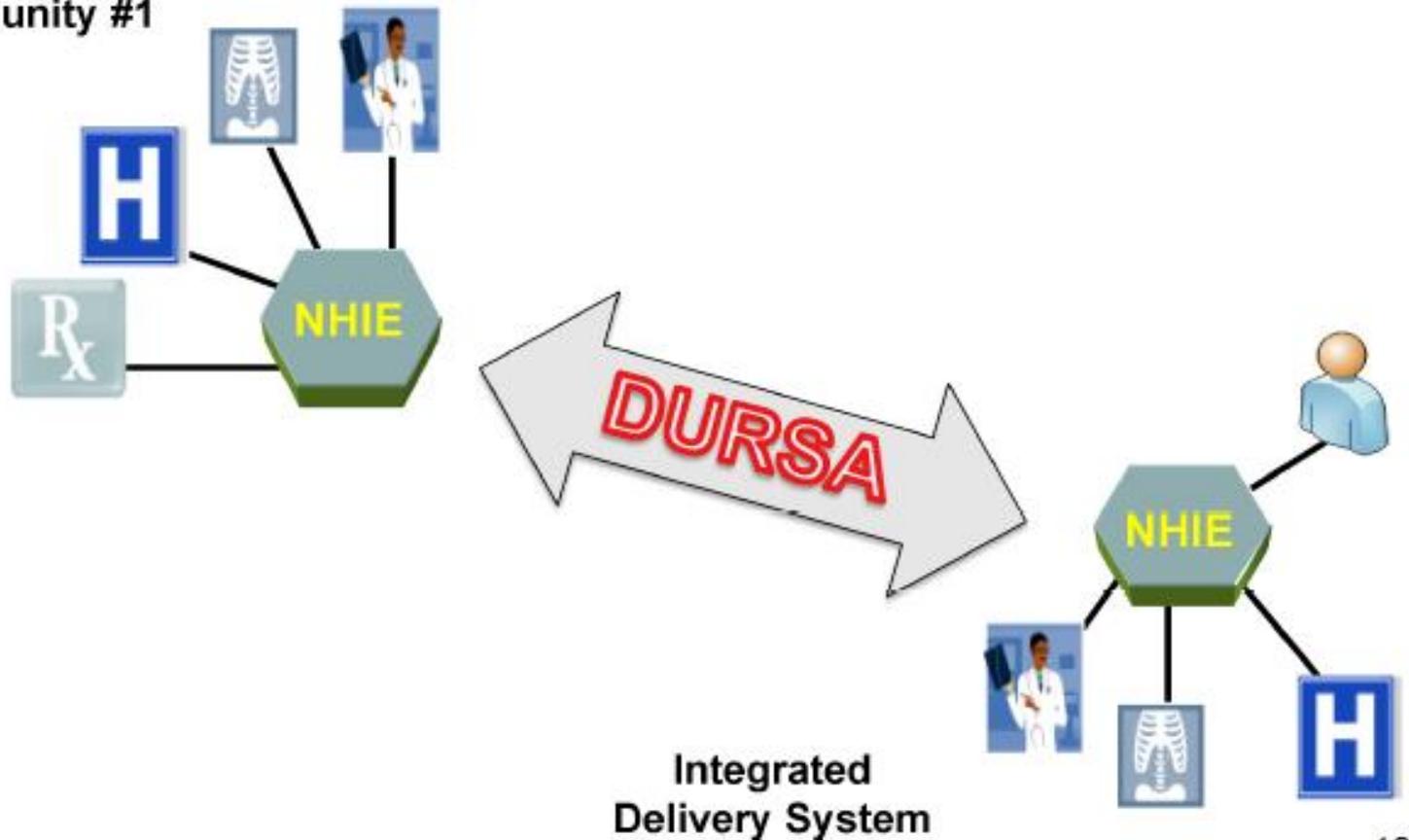


- **Participants are networked entities that facilitate information exchange with a broad set of users, systems, geography or community**
- **Internet-based, using common implementation of standards and specifications with secure transport**
- **Membership required:**
 - ✓ Tested for conformance and interoperability
 - ✓ Enables valid, trusted entities to participate
 - ✓ Signed trust agreement that allocates responsibilities and accountability to protect information exchanged
 - ✓ Digital credentials issued to permit only approved “participants” to exchange data with other members

NHIN “Network of Networks”

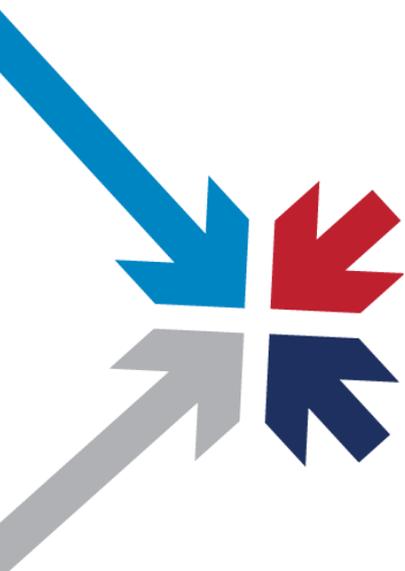
DURSA Enables Exchange among NHIEs via the NHIN

Community #1



Presentation by Paul Matthews: OCHIN's experience with the NHIN DURSA

- OCHIN's proposal to integrate EMRs with the Social Security Administration's (SSA) disability programs has been approved.
- OCHIN will use the \$280,000 grant to develop software to connect EMRs, which will be sent through NHIN to the SSA.
- This process will significantly shorten the time it takes to make a disability decision and improve the speed, accuracy, and efficiency of SSA disability programs.

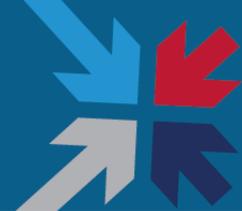


TRUST AGREEMENT FOR THE NHIN

Data Use and Reciprocal Support
Agreement (DURSA)

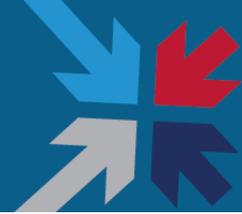


Data Use and Reciprocal Support Agreement

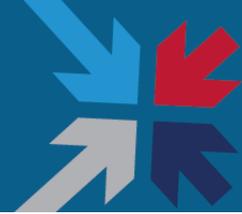


- » A comprehensive, multi-party trust agreement that will be signed by all eligible entities who wish to exchange data among NHIN Participants
- » Requires signatories to abide by common set of terms and conditions that establish Participants' obligations and the trust fabric to support the privacy, confidentiality and security of health data that is exchanged
- » Assumes that each participant has trust relationships in place with its agents, employees and data connections (end users, systems, data suppliers, networks, etc.)
- » As a living document, the agreement will be modified over time

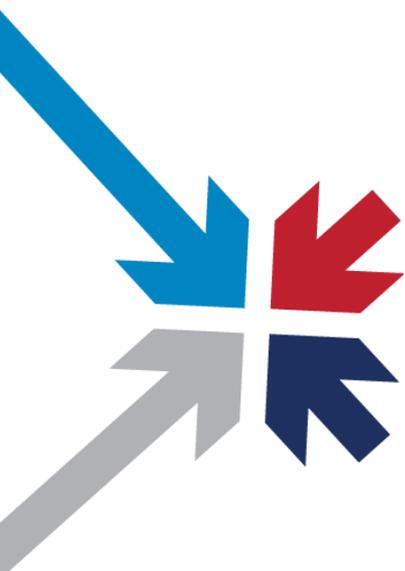
DURSA Milestones



- » May 2008 – draft agreement developed for exchange of test data for testing and demonstration purposes (Test Data DURSA)
- » September 2008 – Test Data DURSA executed by 11 private entities, 4 state entities and 6 Federal agencies
- » December 2008 – draft agreement developed to support exchange of individually identifiable data in production environment
- » June 2009 – Draft Limited Production DURSA submitted to Federal clearance
- » July – November 2009 – Comments resolved, executable version of DURSA prepared and agreement approved by NHIN Cooperative
- » November 2009 – Submit to clearance for approval and signature
- » Ongoing – maintain agreement in support of NHIN efforts



- » Facilitated by ONC through NHIN Trial Implementation contracts in close coordination with HHS OGC
- » Intensive effort to develop agreement using consensus process with legal, privacy, security and program representatives from diverse group (NHIN Cooperative):
 - 9 Private entities
 - 4 State entities
 - 9 Federal entities
- » Multiple rounds of Federal clearance processes (VA, SSA, HHS, DoD) and reconciled cross-agency issues
- » Coordinated with and obtained input from Office for Civil Rights

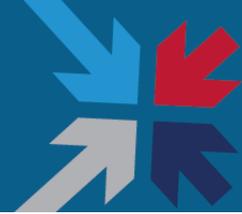


KEY PROVISIONS OF THE DURSA

Data Use and Reciprocal Support
Agreement (DURSA)



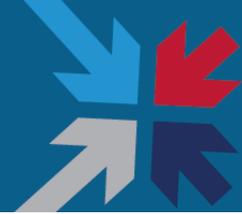
Multi-Party Agreement



- » The DURSA must accommodate and account for a variety of Participants so that it can successfully serve as a multi-party agreement among all Participants. This multi-party agreement is critical to avoid the need for each Participant to enter into “point-to-point” agreements with each other Participant, which becomes exceedingly difficult, costly and inefficient as the number of Participants increases.

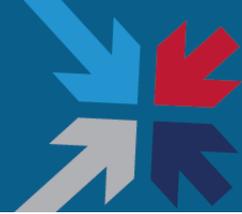
Federal participants have asserted that supporting point-to-point agreements is not sustainable for information exchange.

Participants in Production



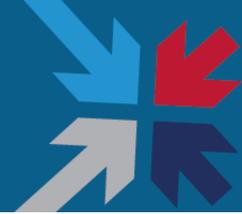
- » The DURSA expressly assumes that each Participant is in “production” and, as a result, already has in place trust agreements with or written policies applicable to its agents, employees and data connections (end users, data suppliers, systems, and networks, etc.)

These trust agreements and policies must include terms necessary to support the trust framework memorialized in the DURSA.



- » The DURSA reaffirms each Participant's obligation to comply with "Applicable Law." As defined in the DURSA, "Applicable Law" is the law of the jurisdiction in which the Participant operates.
 - For non-Federal Participants, this means the law in the state(s) in which the Participant operates and any applicable Federal law.
 - For Federal Participants, this means applicable Federal law.

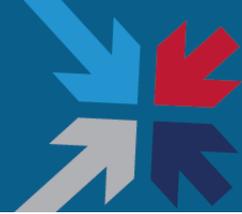
Privacy and Security Obligations



- » To the extent that each Participant has existing privacy and security obligations under applicable law (e.g. HIPAA or other state or federal privacy and security statutes and regulations), the Participant is required to continue complying with these obligations.

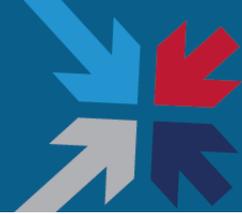
Participants, which are neither HIPAA covered entities, HIPAA business associates nor governmental agencies, are obligated to comply with specified HIPAA Privacy and Security provisions as a contractual standard of performance.

Requests for Data Based on Permitted Purposes



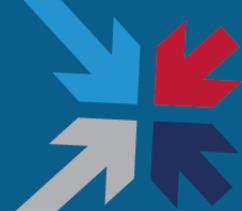
- » Participant's end users may only request data through the NHIN for "Permitted Purposes," which include treatment, payment, limited health care operations with respect to the patient that is the subject of the data request, specific public health activities, quality reporting for "meaningful use" and disclosures based on an authorization from the individual.

Duty to Respond



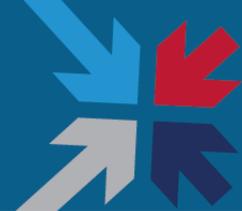
- » Participants that allow their respective end users to seek data for treatment purposes have a duty to respond to requests for data for treatment purposes.
- » This duty to respond means that if actual data is not sent in response, the Participant will at a minimum send a standardized response to the requesting Participant.
- » Participants are permitted, but not required, to respond to all other (non-treatment) requests.
- » The DURSA does not require a Participant to disclose data when such a disclosure would conflict with Applicable Law.

Future Use of Data Received Through the NHIN



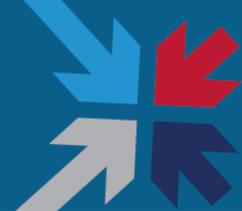
- » Once the Participant or Participant's end user receives data from a responding Participant (i.e. a copy of the responding Participant's records), the recipient may incorporate that data into its records and retain that information in accordance with the recipient's record retention policies and procedures.
- » The recipient can re-use and re-disclose that data in accordance with all applicable law and the agreements between a Participant and its end users.

Duties of Requesting and Responding Participants

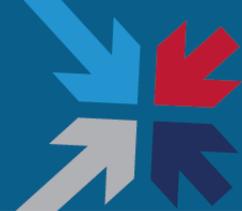


- » When responding to a request for data, Participants will apply their local policies to determine whether and how to respond to the request. This concept is called the “autonomy principle” because each Participant can apply its own local access policies before requesting data from other Participants or releasing data to other Participants.
- » It is the responsibility of the responding Participant – the one disclosing the data – to make sure that it has met all legal requirements before disclosing the data, including, but not limited to, obtaining any consent or authorization that is required by law applicable to the responding Participant.

Duties of Requesting and Responding Participants

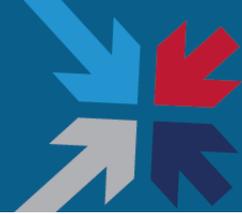


- » To effectively enable the exchange of health information in a manner that protects the privacy, confidentiality and security of the data, the DURSA adopts the HIPAA Privacy and Security Rules as minimum requirements.
- » When a request is based on a purpose for which authorization is required under HIPAA (e.g. for SSA benefits determination), the requesting Participant must send a copy of the authorization with the request for data. Requesting Participants are not obligated to send a copy of an authorization or consent when requesting data for treatment purposes.



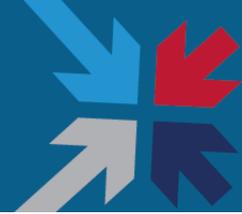
- » The NHIN Coordinating Committee will be responsible for accomplishing the necessary planning, consensus building, and consistent approaches to developing, implementing and operating the NHIN, including playing a key role in the following:
 - NHIN breach notification
 - Dispute resolution
 - Participant membership, suspension and termination;
 - NHIN operating policies and procedures; and,
 - Informing the NHIN Technical Board when proposed changes for interface specifications have a material impact on Participants.
- » Developed as interim approach as part of NHIN option year contracts and grants for production pilots.

Breach Notification



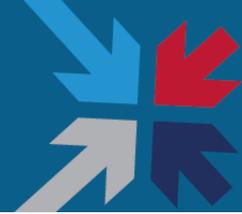
- » Participants are required to promptly notify the NHIN Coordinating Committee and other impacted Participants of suspected breaches (within 1 hour) or confirmed breaches (within 24 hours) which involve the unauthorized disclosure of data through the NHIN, take steps to mitigate the breach and implement corrective action plans to prevent such breaches from occurring in the future.
- » This process is not intended to address any obligations for notifying consumers of breaches, but simply establishes an obligation for Participants to notify each other and the Coordinating Committee when breaches occur to facilitate an appropriate response.

Mandatory Non-Binding Dispute Resolution



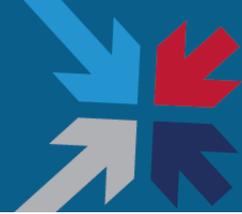
- » Because the disputes that may arise between Participants will be relatively complex and unique, the Participants are required to participate in the dispute resolution process but are still free to pursue legal remedies if they are not satisfied with the outcome of the dispute resolution process.
- » Multi-step process
 - Informal Conference between the Participants involved in the dispute
 - If not resolved through the Informal Conference, the Dispute Resolution Subcommittee hears the dispute and is encouraged to develop an appropriate and equitable resolution
 - NHIN Coordinating Committee can review the Subcommittee's recommendation, if requested by any Participant involved in the dispute, and issue its own resolution

Allocation of Liability Risk



- » With respect to liability, the DURSA articulates the Participants' understanding that each Participant is responsible for its own acts or omissions and not for the acts or omissions of any other Participant.
- » If a Participant allows a User to improperly access Message Content through the NHIN and another Participant is harmed as a result then the Participant who allows that access may be liable. However, the DURSA explicitly recognizes that a Participant cannot bring a cause of action against another Participant where the cause of action is prohibited by Applicable Law.
- » This section is not intended as a hold harmless or indemnification provision.

For More Information



www.hhs.gov/healthit

See NHIN Today link – Resources

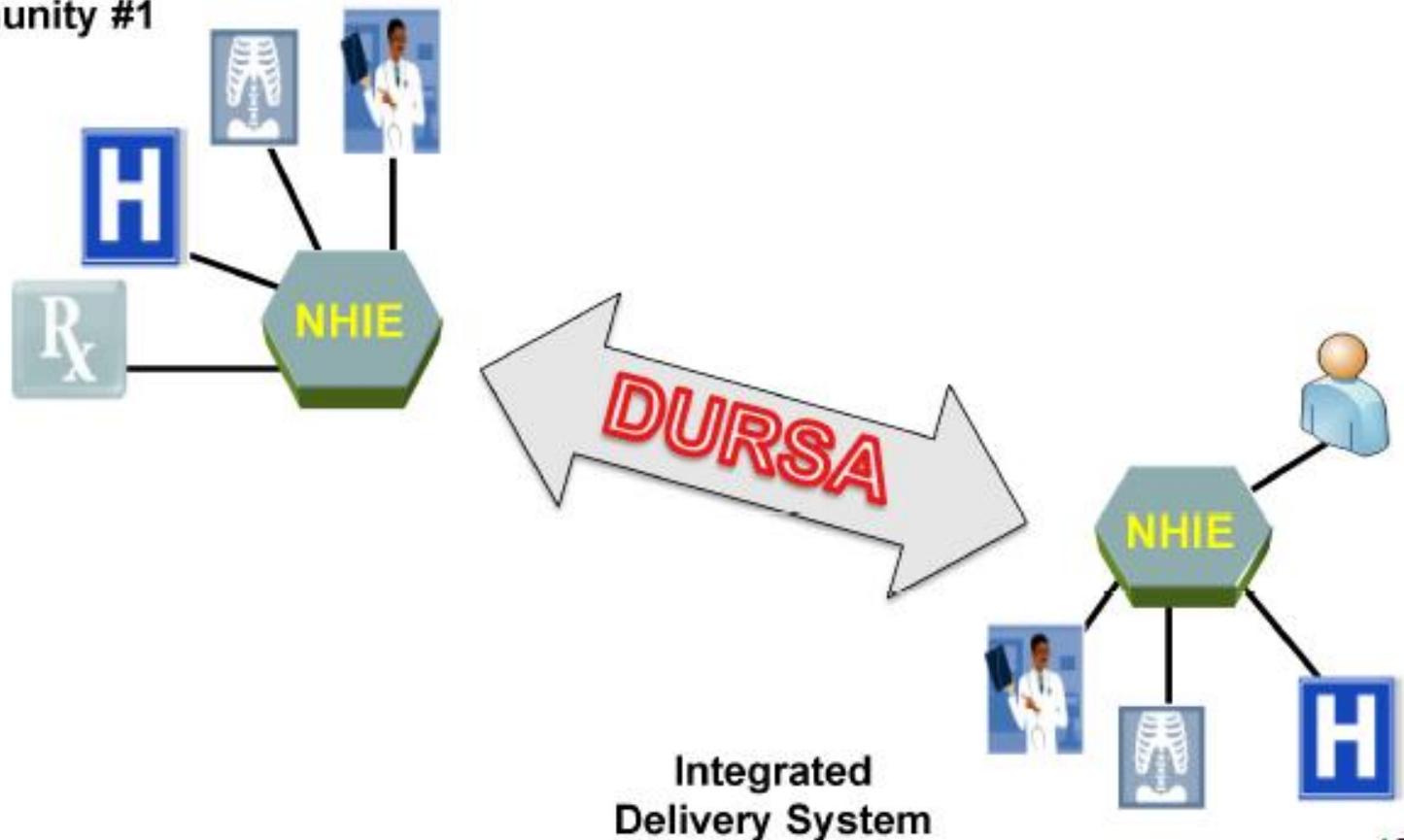
HISPC Model Data Sharing Agreements (DSAs)

- HISPC involved the work of 42 states and territories who participated in **seven multi-state collaborative work groups** to develop and test solutions for the privacy and security of interstate HIE
- One of the seven collaboratives was dedicated to developing Inter-Organizational Agreements (IOA). The **IOA model data sharing agreements (DSAs)** are the result of several years of highly cooperative work among states, territories, and the federal government to resolve unnecessary barriers to interstate, interoperable, private, and secure HIE.
- **2 model DSAs resulted:** private-to-private entity, and public health-to-public health entity; ***focus today is on the private entity DSA***

NHIN “Network of Networks”

DURSA Enables Exchange among NHIEs via the NHIN

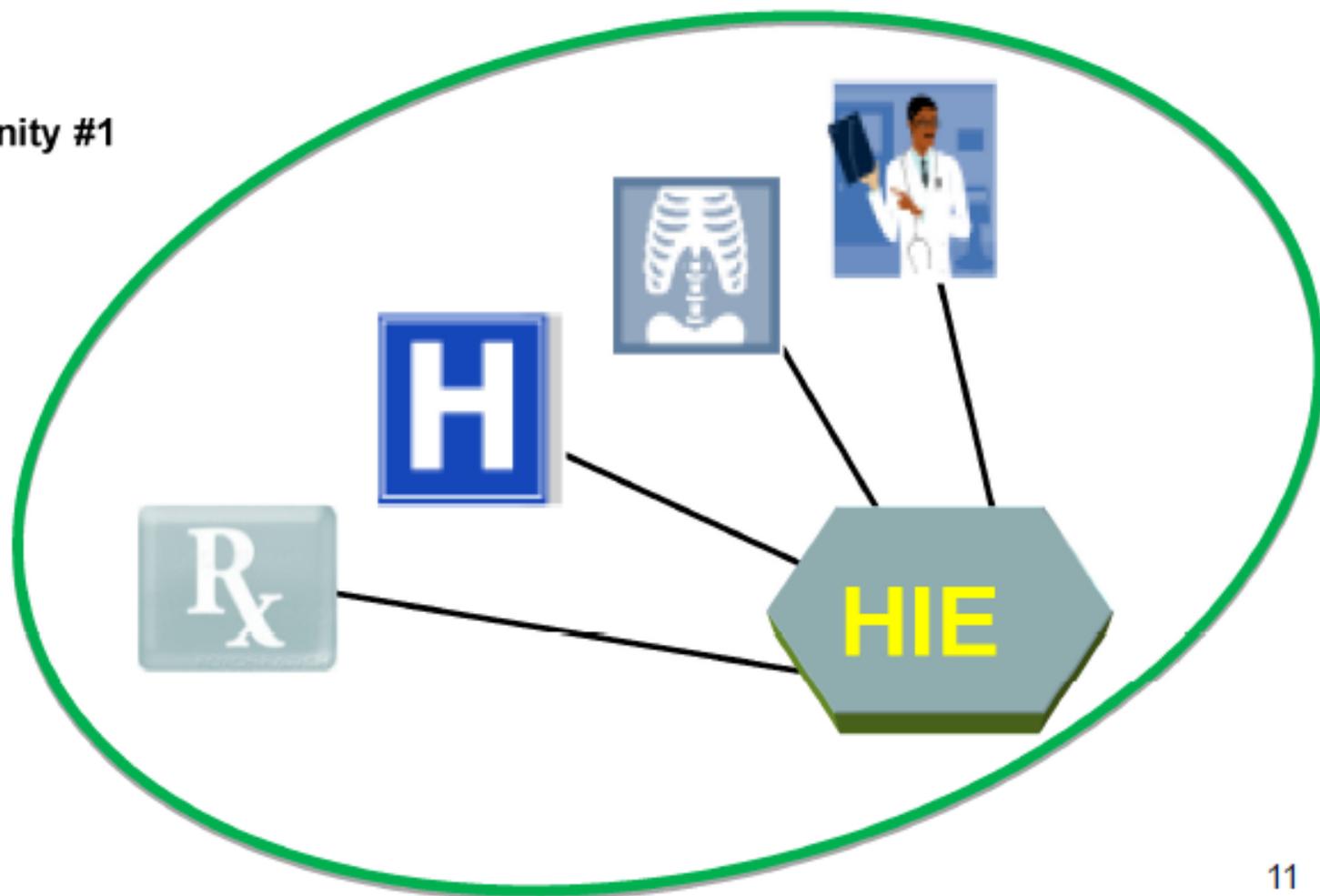
Community #1



“Network of Networks”

HIEs within the NHIN Have Separate Agreements

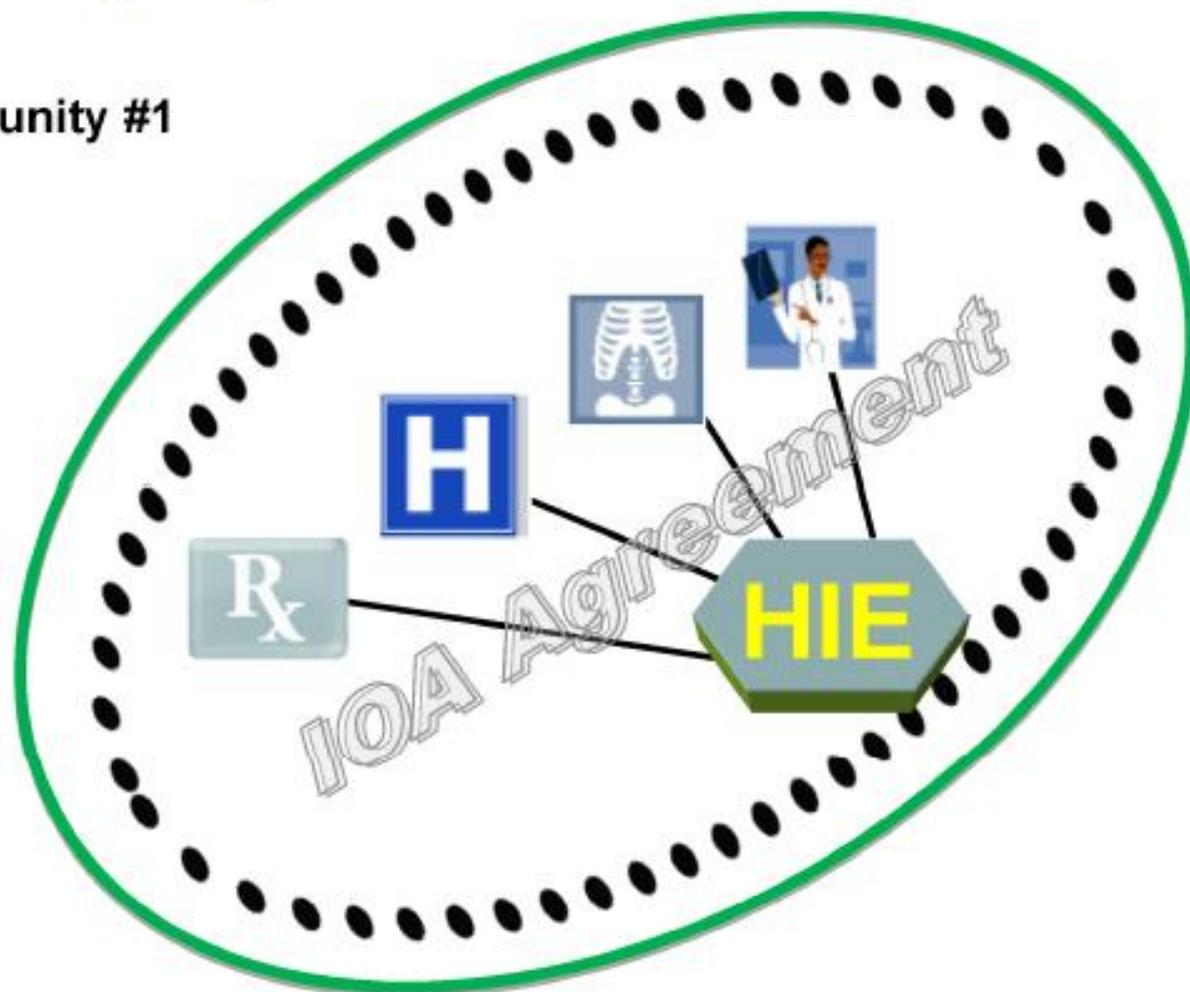
Community #1



“Network of Networks”

A Community May Create a Community HIE “Utility”

Community #1



HISPC DSA Development Process

- IOA Reviewed a wide variety of existing DSAs and other agreements, and federal and state laws and regulations to develop consensus on core content and language.
- The Collaborative also coordinated with key groups, such as the NHIN DURSA Work Group and the other HISPC multistate collaboratives, to ensure consistency and continuity of effort.
- Documented a core set of privacy and security provisions and pilot tested the two model DSAs in real-life settings. Lessons learned from the pilots were used to create Implementation User Guides.

HISPC Model DSA: Private-to-Private

- Universal agreement for all providers
- Assumes point-to-point, but can be used for networks
- Can be used cross-state or intrastate
- Reviewed and approved by North Carolina NHIN participant

HISPC Model DSAs

- **Policy Decisions and Guiding Principles:**

1. The template agreements were drafted for ***use across all jurisdictions.***
2. ***HIPAA compliance was a guiding principle*** as part of an overall concern for privacy and security in HIE.
3. Agreements pertain to information requested ***only for the purposes of treatment, payment, health care operations***
4. Specific categories of ***sensitive data, such as HIV*** and mental health information, are subject to state law and are not extensively addressed in these agreements.
5. Each party will ***only share information that can be shared without additional specific protections.***
6. Each party will operate under and ***comply with its own applicable state law.***

HISPC Model DSAs

- **Policy Decisions and Guiding Principles**
7. Detailed provisions and technological ***specifications for user authentication, auditing, access, and authorization are not included*** in the templates. They are left to attachments agreed to by all parties.
 8. ***Each party's applicable state law will govern disputes***, and in the event that a dispute cannot be resolved, the parties will look to federal law and the growing body of federal common law.
 9. Participation is voluntary and can be terminated at will. ***The IOA elected not to include governance provisions***, as such provisions would limit the generality of the documents.
 10. Entering into these agreements ***does not change ownership of data***.
 11. ***Additional parties may be added*** to the Private Agreement if the existing parties so decide. Alternative language is provided that sets out methods for such addition of parties.

Discuss DURSA, DSA, and Oregon's HIE needs

- **Compare and contrast DURSA and DSA:**
 - Differences: governance, language around applicable law, appropriate signatories, capacity to customize/amend
- **Open discussion:**
 - Question: Does it make sense to:
 1. adopt NHIN DURSA for agreements between the State/SDE and HIOs and between HIO-to-HIO (network of networks), and/or
 2. develop/implement a standardized HISPC DSA for use within HIOs (between HIOs and their subscribing providers/users)
 - Identify any other questions, concerns, or suggestions around developing a common data sharing agreement for Oregon HIE, including:

Other Policy Considerations

- Any additional policy needs that should be addressed by the Legal & Policy Workgroup?
 - Possible areas for policy development: vendors, liability/insurance, other?

Public Comment

Next Steps

- **Next meetings:**
 - **HIO Executive Panel:** May 19, 1-5pm, 1225 Ferry St., Salem
 - **Legal & Policy Workgroup:** April 14, 1-5pm, PSOB, Portland
 - **Technology Workgroup:** April 20, 1-5pm, PSOB, Portland

Questions or Comments:

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Oregon Health Authority