

No Surprises Found by the Government Accountability Office: Sharing Personal Health Information Through Health Information Exchanges Improves Patient Care

by Kim Licata

On February 17, 2010, the Government Accountability Office (GAO) released its Report to Congressional Committees on Electronic Personal Health Information Exchange (GAO-10-361), a study initiated to promote the use of information technology for the electronic exchange of health information among providers and otherwise health care entities involved in the delivery of health care services. The many benefits of appropriate and well-designed electronic exchange of health information motivated Congress to pass the Health Information Technology for Economic and Clinical Health (HITECH) Act as part of the American Recovery and Reinvestment Act of 2009 to incentivize the adoption of technology to promote such electronic information exchange. While the GAO study does not provide particularly unexpected results, the report confirms the common adoption by health information exchanges (HIEs) of seven elements of the Fair Information Practices underlying the regulations and policies of the Health Insurance Portability and Profitability Act of 1996 (HIPAA) and validates the purpose of HIE and electronic information exchange.

THE STUDY DESIGN

The study focused on case studies of four HIEs of approximately 60 HIEs reported to be operational. Within these case studies, the GAO also studied a selection of the providers identified as active participants in the HIEs. Additionally, the GAO interviewed two integrated health care delivery systems, two professional associations and a state electronic health collaborative. The study took place between May 2009 and February 2010.

STANDARDS AND RULES APPLICABLE TO EXCHANGE OF HEALTH INFORMATION

It is currently unclear exactly which set of federal regulations establish privacy and security requirements of HIEs, but in general, HIEs have adopted the core elements upon which HIPAA's privacy and security regulations were based. In the coming weeks, the issuance of the anxiously-awaited HITECH regulations may clarify the extent to which HIPAA's Privacy and Security Rules may apply to information exchange by HIEs.

After establishing the privacy principles adopted by HIEs, the report examined and noted the following benefits of a successful information exchange:

COMMONLY IMPLEMENTED FAIR INFORMATION PRACTICES

- Informing individuals about the use of their information
- Obtaining individual consent
- Facilitating individual access to and correction of their information
- Limiting use and disclosure to a specific purpose
- Providing security safeguards
- Ensuring that data is accurate, timely, and complete
- Establishing accountability for how personal information is handled

- Increased patient safety;
- Improved quality of health care;
- Enhanced efficiency of administrative functions;
- Reduced costs;
- Decreases in the duplication of diagnostic procedures;
- Prevention of medical errors.

None of these stated benefits surprises health care entities working in health information technology, and all of them have consistently been offered as justifications for incentivizing providers and health care entities to convert to electronic health information records.

Many of the hospitals in western North Carolina have joined an exchange linking the data from their facilities to other area facilities to coordinate patient care and improve outcomes. To date, participants in the exchange have had positive interactions with each other and have found the electronic exchange of information has confirmed many of the findings of this report. The success of this program in western North Carolina should provide further incentive to hospitals in other areas of the state to investigate whether joining a health information exchange is an appropriate step toward more streamlined and coordinated patient care for the patients living in their service areas.

HERE COMES PATIENT PROTECTION...
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“INDEPENDENT” BOARD TO SET NEW MEDICARE PAYMENT FORMULAS. Ninth, Section 3403 of the Act authorizes the creation of the Independent Medicare Advisory Board (the Board), which will determine new Medicare payment formulas. The Board is prohibited under the Act from proposing to raise beneficiary premium, ration care, and raise revenues. The Board also cannot propose to reduce payment rates for items and services provided prior to December 31, 2019. This Section involves the Chief Actuary of CMS and is intended to reduce Medicare expenditures over time.

DEMONSTRATION PROJECT FOR DEVELOPMENT OF ALTERNATIVE TORT LITIGATION SYSTEMS. Finally, Section 10607 of the Act creates a demonstration project under which states are eligible for grants to develop, implement and evaluate alternatives to the current tort litigation system to resolve disputes over injuries allegedly causes by health care providers or organizations. The alternatives under these grants must resolve the disputes as well as promote a reduction in health care errors through the encouragement of reporting patient safety data related to these disputes to patient safety organizations or other entities that “engage in efforts to improve patient safety and the quality of health care.” The government has sought to increase the reporting of patient safety data, especially as it relates to pending malpractice claims, for the purpose of improving care and reducing preventable errors through various initiatives for the past five years. States awarded such grants will be required to report their findings and analysis to the Secretary of HHS.

CONCLUSION. The Act offers multiple opportunities for hospitals to improve patient care, finances, and health care workforce. While the lengthy Act provides details for many opportunities, we can expect further refinements, amendments, and explanations in future legislation and regulations. Since much of the Act’s implementation is not until 2011 to 2014, we also anticipate that some provisions of the Act will substantially change or even be eliminated. Much time and effort will likely be spent in the next decade striving to decipher and then implement the many reform measures of the Act. In the interim, hospitals are encouraged to consult with an attorney or consultant familiar with the Act concerning the Act’s applicability to you.

For more information on the Patient Protection and Affordable Care Act of 2010 or other health law related issues, please contact **Kim Licata** at **919.783.2949** or **klicata@poynerspruill.com**.

INFORMATION PRACTICES OF HIES

Information and how it is to be protected

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information is protected.

Keep in mind, as North Carolina providers continue to grapple with how to design an effective, yet protected, statewide health information superhighway, this GAO report, other studies, and experts in the field gain significance. Joining a HIE raises many legal issues—particularly liability, privacy, and security issues—such that involving a qualified consultant or attorney to prepare or review the necessary agreements, as well as associated policies and procedures, is essential to maximizing the benefits of health information exchange, while minimizing the potential risks.

To read the GAO report, go to <http://www.gao.gov/cgi-bin/getrpt?GAO-10-361>, with highlights identified by the GAO at <http://www.gao.gov/highlights/d10361high.pdf>. ■

