

Governance for Nationwide Health Information Network

Discussion Document

October 1, 2010

Goal

Establish the governance mechanisms necessary to facilitate electronic health information exchange nationwide.

General Assumptions

- Governance should focus on elements of trust and interoperability and compliance with these elements to meet the goal.
- All parties to health information exchange will be subject to applicable law. Some participants and intermediary entities will be covered by HIPAA, others will not.
- Certification of technical solutions used for exchange or accreditation of entities that facilitate exchange (e.g. HIOs, intermediaries, HISPs, etc.) will be one component of governance.
- The form(s) of governance and any baseline rules should follow the function(s) or service(s) identified as requiring governance.
- The rules should establish minimum rules and be flexible to allow for the market to develop and innovate.
- The Governance rule will build on existing authorities.

Potential Scope of Governance Rule

- Specify the rules, structures and/or processes through which trust and interoperability elements should be governed (established, maintained, validated, and overseen/enforced).
- Potential levers to promote participation
 - Entities who wish to be recognized and use a “brand” (to be determined)
 - Entities who wish to receive federal funds
 - Entities who wish to receive federal health information
- Entities may demonstrate compliance with a set of trust and interoperability criteria, based on the electronic health information exchange function(s) they:
 - Provide (facilitate) and/or seek to utilize, and
 - The degree of access to personal health information, identifiable or aggregated.

Compliance and Enforcement

- Approaches to consider:
 - Oversight by HHS
 - Accreditation or certification of intermediaries (eg. HIOs or HISPs)
 - Required compliance reviews by outside entities
 - Self-assessment and representation
 - Exclusion from participation in the “Network”
 - Assigning risk and liability (e.g. to those in the best position to manage risk)
 - Private contracts

Advice ONC Seeks from the NHIN Governance Workgroup

- Identification of the functions/activities/services that require governance.
- Identification of the minimum elements for trust and/or interoperability for each function (not the specific policies).
- Who should specify the policy (federal government, other body)?
- Identification of how and/or by whom those minimum elements should be governed.
- Identification of what oversight, enforcement, and/or accountability should be applicable to each respective participant based on the function they provide and/or utilize and whether they voluntarily or are required to comply.