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**HIT Policy Committee**  
**Governance Work Group**  
**Panel #4: Existing Governance Authorities**

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**Biography**

Michael Matthews, MSPH, CEO of MedVirginia and Chair of the Exchange Coordinating Committee, is a seasoned healthcare executive with extensive experience in public health, health information technology, care management, healthcare administration, and research and evaluation. Mr. Matthews served as the Principal Investigator of the AHRQ-funded Rural Virginia eHealth Collaborative (RVEC); Principal Investigator for CenVaNet's Medicare Care Coordination Demonstration (MCCD) project with CMS; and Project Executive for MedVirginia's contract with HHS and SSA for NHIN and MEGAHIT. In early 2008, U.S. Secretary of Health and Human Services, Michael Leavitt, appointed Michael to be the statewide "Convener" for Virginia's successful application to participate in CMS Electronic Health Records (EHR) Demonstration. In 2009, he was appointed to the state's Health IT Advisory Commission by Gov. Kaine, and in January 2010 he received the "eHealth Advocate of the Year Award" from eHealth Initiative, the nation's leading HIE industry association. Most recently, Surescripts, The Nation's E-Prescription Network, announced in February 2010 that it has formed a committee to help guide the company's development of a prescription history service for health information exchanges, and Mr. Matthews was appointed to this HIE Advisory Committee.

**Introduction**

My name is Michael Matthews and I am the Chief Executive Officer of MedVirginia, one of the first Participants in the Exchange, and the Chair of the Exchange Coordinating Committee. I am pleased to have the opportunity to offer this testimony to the Governance Work Group of the Health Information Technology Policy Committee as part of the Work Group's hearing on issues related to the scope and purpose of governance of the nationwide health information network. I have been asked to provide testimony to inform the Work Group about the current state of the Coordinating Committee, the successes we have accomplished over the past year and the lessons we have learned that can help the Work Group in their important deliberations about

governance for the nationwide health information network. Through my testimony, I will provide you with the following information:

- a brief background on the Exchange;
- the origins of the Coordinating Committee;
- the role of the Coordinating Committee in supporting the Exchange;
- the current and future composition of the Coordinating Committee; and
- the successes of the Coordinating Committee and the challenges we have faced.

### **Background on the Exchange**

In September 2007, nine health information exchanges (HIEs), including MedVirginia, were awarded contracts by the Department of Health and Human Services to engage in trial implementations of the Nationwide Health Information Network (NHIN). In April 2008, six additional organizations were awarded grants for participation in the trial implementations. The trial implementations were designed to be a "proof of concept" project to demonstrate the ability of various HIEs to participate in a network of networks and exchange health information on a nationwide basis.

The nine contractors, six grantees and their Federal partners, including the Social Security Administration and the Veterans Health Administration, constituted the NHIN Cooperative. According to the HHS website, "these organizations collaborated and achieved consensus to specify, build, and test demonstrate [sic] a core set of capabilities to enable basic exchange of health information between the different HIE networks, patients, and other stakeholders...The NHIN Cooperative continued its work to agree to specifications, test and demonstrate seven breakthrough use cases in December 2008, as recommended by the AHIC and accepted by the Secretary."<sup>1</sup>

The demonstrations definitively proved that diverse organizations could come together, build a core set of interoperable specifications and exchange clinical data in a network of networks. Proving that a network of networks model is viable was a phenomenally important finding given the emerging consensus that point-to-point arrangements are not scalable and will not result in the type of widespread data exchange that is essential to improve the quality and efficiency of health care.

In February 2009, MedVirginia and the Social Security Administration became the first two "Participants" in what is now known as the "NHIN Exchange" or "Exchange" to exchange real patient data to support disability determinations. The Veterans Health Administration and Kaiser Permanente became Participants in the Exchange soon thereafter and began exchanging real patient data to support the treatment of veterans.

The Exchange has continued to grow over the past year and a half and we now have ten Participants and five eligible applicants who are undergoing the onboarding process. These ten Participants represent Federal agencies, non-Federal organizations, HIEs, large integrated delivery systems and small physician practices. The Exchange is being used

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<sup>1</sup> Available at [http://healthit.hhs.gov/portal/server.pt?open=512&objID=1191&parentname=CommunityPage&parentid=9&mode=2&in\\_hi\\_userid=10732&cached=true](http://healthit.hhs.gov/portal/server.pt?open=512&objID=1191&parentname=CommunityPage&parentid=9&mode=2&in_hi_userid=10732&cached=true) (last accessed September 24, 2010).

by SSA to obtain medical evidence for disability determinations, by the Centers of Medicare and Medicaid Services (CMS) for a pilot to demonstrate enhanced communication and coordination of care, by VA and DoD for the Virtual Lifetime Electronic Record (VLER) initiative, and by CDC for disease surveillance purposes.

As we look forward to the next 12-18 months, we are very excited to see many more Participants on the horizon. We expect to see as many as 50 new organizations apply to participate in the Exchange over the coming year. This is a remarkable number of new Participants given that only those organizations operating under the scope of a contract with a Federal agency related to the Exchange can participate.<sup>2</sup>

### **Origins of the Coordinating Committee**

In addition to being responsible for developing the technical specifications and infrastructure for the trial implementations and the Exchange, the NHIN Cooperative was also responsible for developing the legal infrastructure to support the exchange of health information among Participants. ONC charged the Cooperative with assessing the current legal environment and developing an appropriate data sharing agreement. While a plethora of agreements existed for point-to-point data exchange, there did not appear to be a good model agreement to support the type of widespread, multi-party exchange in a "network of networks" that was envisioned for the trial implementations and the Exchange. ONC established a work group composed of legal and business representatives of members of the Cooperative to draft a Data Use and Reciprocal Support Agreement (DURSA) to support the exchange of test data in the trial implementations and, subsequently, live data in the Exchange.

The DURSA Work Group, which was co-chaired by Steve Gravely as MedVirginia's legal representative and Holt Anderson as NCHICA's business representative, worked diligently to create a framework in which the Participants would feel comfortable exchanging data with each other. Three years ago, when the DURSA Work Group began its work, it did not have the benefit of the trust framework that was recently adopted by the NHIN Work Group of the HIT Policy Committee. Fortunately, they did have dedicated, experienced individuals drawn from the Cooperative members and expert facilitation, which enabled the Work Group to start from the ground up to achieve consensus resolution on core issues that had to be addressed to establish trust among the Participants. Throughout the DURSA Work Group's discussions, the Cooperative identified various governance and management functions that would have to be fulfilled in order for the Exchange to operate efficiently and effectively and to engender trust among the Participants. Let me highlight a few of these issues to demonstrate the interdependency of governance and operations within a trust framework.

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<sup>2</sup> According to the HHS Website "[u]nder HITECH, ONC is obligated to establish a governance mechanism for the nationwide health information network. ONC is preparing to begin a rulemaking process for governance. Until that rule is final, only federal entities and non-federal entities that are part of a federally-sponsored contract, grant or cooperative agreement that pertains to the nationwide health information network implementation can participate. This enables entities exchanging data to test the processes needed to support the operational exchange of health information." Available at [http://healthit.hhs.gov/portal/server.pt?open=512&objID=1407&parentname=CommunityPage&parentid=8&mode=2&in\\_hi\\_userid=11113&cached=true](http://healthit.hhs.gov/portal/server.pt?open=512&objID=1407&parentname=CommunityPage&parentid=8&mode=2&in_hi_userid=11113&cached=true) (last accessed September 24, 2010).

Dispute Resolution. Disagreements are inevitable and a fair and efficient way of resolving them is needed to ensure proper accountability among Participants. The Cooperative recognized that as data exchange proliferates, there will be disputes among those who participate in the data exchange process. The Participants wanted the ability to try to reach resolution on disputes among themselves before taking the dispute through mechanisms outside of the Exchange. However, the governmental Participants are prohibited by law from agreeing to binding arbitration. The Cooperative worked hard to create a mandatory, non-binding dispute resolution process that was acceptable to all Participants. One key requirement was that the process be under the direction of some oversight body which, in this case, is the Coordinating Committee.

Breach Reporting. The Cooperative determined that the function of centralized "Breach"<sup>3</sup> reporting was critical to engender trust among the Exchange Participants. To trust all other Participants and to protect the security of the Exchange, each Participant wanted to know that it would be made aware of Breaches involving the transaction of data through the Exchange. After being made aware of a Breach, each Participant will take appropriate action within its organization, but there may also be actions that need to be taken at the Exchange level. However, in order for Participants to have trust in this system, they required that the process be overseen by a governance body. For the Exchange, this is the Coordinating Committee.

Imposition of Sanctions. A final example of how the Cooperative designed governance functions to support trust is imposition of sanctions and other consequences levied against those Participants who do not live up to the requirements of the Exchange.. Those who fail to comply with the terms of the DURSA or otherwise jeopardize the privacy or security of the Exchange or information transacted through the Exchange must be removed from the Exchange temporarily or permanently depending on the surrounding circumstances. Through suspension and termination, the Participants could enforce the terms of the DURSA and hold each other accountable for bad acts. Once the need for suspension and termination mechanisms was established, the question then became who would evaluate circumstances and make determinations about suspension and termination. Again, the Participants recognized the need for a central body to evaluate circumstances that may warrant a Participant's suspension or termination and make appropriate decisions based on the facts.

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<sup>3</sup> In the November 2009 version of the DURSA, "Breach" is defined as "the unauthorized acquisition, access, disclosure, or use of Message Content through the NHIN. The term "Breach" does not include the following:

- (i) any unintentional acquisition, access, disclosure, or use of Message Content through the NHIN by an employee or individual acting under the authority of a Participant or Participant User if—
  - (I) such acquisition, access, disclosure, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the Participant or Participant User; and
  - (II) such Message Content is not further acquired, accessed, used, or disclosed by such employee or individual; or
- (ii) any acquisition, access, use or disclosure of information contained in or available through the Participant's System where such acquisition, access, use or disclosure was not directly related to transmission of Message Content through the NHIN."

While very different, each of these examples shares the common theme that in order to promote trust in a data exchange there must be some type of governance body to oversee specific activities. For the Cooperative, after extensive discussion among the members and ONC, these functions were assigned to a representative body known as the Coordinating Committee. The Participants formalized their grant of authority to the Coordinating Committee in the DURSA by specifically setting forth its roles and responsibilities. It is these roles and responsibilities that help to establish and maintain trust among the Participants in the Exchange by providing for oversight, enforcement and accountability.

### **Role of the Coordinating Committee**

The overarching role of the Coordinating Committee is to provide the needed governance, oversight, management and support of the trust fabric for the Exchange Participants. The roles and responsibilities of the Coordinating Committee set forth in the DURSA include:

- Reviewing, evaluating, and acting upon Definitive Plans submitted by organizations that want to become members of the Coordinating Committee;
- Determining whether to admit new participants to the Exchange;
- Suspending or terminating Participants;
- Receiving reports of Breaches and acting upon such reports;
- Resolving Disputes between Participants;
- Determining Materiality of proposed new, or changes to existing, Exchange Performance and Service Specifications;
- Developing and amending Exchange Operating Policies and Procedures; and
- Managing the amendment of the DURSA.

For many of these Coordinating Committee activities, the DURSA provides additional details about how the Coordinating Committee will fulfill or execute its responsibilities. For instance, the DURSA contains provisions that describe the process the Coordinating Committee will use to adopt Operating Policies and Procedures or obtain approval from the Participants to amend the DURSA. The Coordinating Committee has also adopted various Operating Policies and Procedures that describe how it will conduct itself and fulfill its responsibilities. These Operating Policies and Procedures are yet another tool that supports trust among the Participants by knowing that the Coordinating Committee can operate effectively to oversee certain aspects of the Exchange and enforce the expectations of Participants set forth in the DURSA.

Noticeably absent from the Coordinating Committee's responsibilities are those related to the development and approval of the technical specifications and management of the technical infrastructure for the Exchange (e.g. certificate authority and Participant registry). At ONC's request, the responsibility for development and approval of the technical specifications for the Exchange was granted by the Participants to the Technical Committee.

The DURSA identifies the specific responsibilities that are delegated by the Participants to the Technical Committee including adopting new and revising existing

technical specifications for the Exchange. There is a “check and balance” system in place in that the Coordinating Committee has the authority to determine whether a new specification is "material," which in turn defines the process that is used by the Technical Committee to adopt the specification.

Responsibility for managing the technical infrastructure for the Exchange has remained within ONC. ONC staff and contractors are responsible for many operational aspects of the Exchange including validation testing as part of the application process for an entity that wants to become a Participant, and managing the certificate authority and Participant registry. The Coordinating Committee must work very closely with ONC on many of these issues since they overlap with areas of the Coordinating Committee's responsibilities. For instance, the Participants have granted the Coordinating Committee the authority to admit new Participants. Before a new Participant can be admitted, they must pass validation testing. The Coordinating Committee relies upon ONC to efficiently and effectively conduct validation testing and produce reports the Coordinating Committee can evaluate as part of its review and determination on an application for participation.

Even though the Coordinating Committee is only one layer of a multi-layered governance and management infrastructure for the Exchange, it is a very important layer, since it is responsible for defining policy for the Exchange and supporting trust among the Participants.

### **Composition of the Coordinating Committee**

When the Cooperative originally designed the Coordinating Committee, the Exchange was in its infancy. At that time, it was important to the Cooperative members that certain stakeholders have a voice in the Coordinating Committee. First and foremost, the Coordinating Committee had to have representatives of each Participant (e.g. those who had signed the DURSA and were actively transacting health information through the Exchange) since these are the organizations that have invested the most in the Exchange and have the most stake in its success. Those who were on track to become Participants in the near future also have a stake in the Coordinating Committee activities and should have the opportunity to participate. Furthermore, members of the Cooperative who are not Participants and were not on track to become Participants still wanted to have a voice in Coordinating Committee activities. Finally, since remaining in lock step with ONC is critical to the success of the Exchange, the Coordinating Committee must have representation from ONC. As a result of the need to engage these stakeholders, the current Coordinating Committee is composed of the following:

- One representative from each Participant in the Exchange;
- One representative from each organization that has submitted a Definitive Plan<sup>4</sup> that has been accepted by the Coordinating Committee;

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<sup>4</sup> A “Definitive Plan” is defined in the DURSA as “a written summary, signed by all entities or agencies that will participate in at least a limited production pilot and become signatories to the DURSA, which attests to the planned timeline, including substantive milestones, that will allow the parties to the attestation to begin, no later than December 31, 2010, actively exchanging health information in compliance with the

- Two representatives elected by the Cooperative; and
- One representative from ONC.

When the Cooperative created this structure for the Coordinating Committee, they understood that it was not infinitely scalable and would have to be revisited in the future once there was broader participation in the Exchange. To everyone’s pleasant surprise, this future arrived more quickly than was expected. Earlier this year, the Coordinating Committee recognized that the rate at which new Participants were joining the Exchange would soon result in a Coordinating Committee that was too large to support the Exchange effectively and efficiently. The Coordinating Committee created a Strategic Issues Task Group to recommend a new model for Coordinating Committee composition based primarily on the assumption that in the near future, the Exchange will have more numerous and more diverse Participants.

The Strategic Issues Task Group undertook a process, much like that being used by the Governance Work Group, to develop its recommendations on composition of the Coordinating Committee. The Strategic Issues Task Group reviewed the role of the Coordinating Committee and assumed that its functions would be largely unchanged. The Task Group then identified (i) a set of key foundational governance principles against which all potential structures would be evaluated and (ii) a list of “givens” – those threshold matters on which all members of the Task Group agreed. While the list of key foundational principles and “givens” is too long to recite here,<sup>5</sup> there are four foundational principles that I would like to highlight because I believe they are especially pertinent to the Governance Work Group’s charge.

- **Consent of the Participants:** The Coordinating Committee’s roles and responsibilities are derived from the DURSA and flow from the consent of the Participants who sign the DURSA. Without their assent, the Coordinating Committee has no role or responsibility and its actions will fail. As a result, obtaining the “buy-in” of the current and future Participants in the Exchange is crucial to the ability of the Coordinating Committee to effectively operate.
- **Representation:** One of the hallmarks of the Exchange is its diversity of Participants. The Coordinating Committee should be composed of representatives of Participants including long time Participants, new Participants and those Participants that have unique interests related to the Exchange or whose engagement at the Coordinating Committee level is critical to the success of the Exchange.
- **Participation:** The Coordinating Committee acts as an executive level “board of directors” that is actively engaged in the operations of the Exchange. The

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NHIN Specifications in at least a limited production pilot that is consistent with priorities set by the NHIN Technical Committee.” The only purpose of the Definitive Plan is to provide a mechanism for the NHINCC to evaluate an entity’s eligibility to serve on the Coordinating Committee prior to that entity becoming a Participant.

<sup>5</sup> Upon request, I am happy to share with the Work Group a whitepaper drafted by the Strategic Issues Task Group which sets forth all of the key principles, givens and issues that were considered during the development of the revised Coordinating Committee structure.

Coordinating Committee has various committees and subcommittees made up of representatives of the Participants, like the Cooperative Workgroups and Coordinating Committee Task Groups. While membership on Coordinating Committee is limited due to size and efficiency constraints, participation in committees and subcommittees will not necessarily have to be likewise constrained. In fact, even representatives of organizations that are not Participants could participate in these subcommittee activities.

- **Continuity and Innovation:** Preserving institutional memory through continuity of membership allows a board or committee to continue operating effectively even with the introduction of new members. Continuity will be particularly important for the Coordinating Committee as the Exchange continues to evolve. The desire for continuity, however, must be balanced against rotation of new members who can help the Coordinating Committee and the Exchange evolve and innovate.

The Task Group met over a period of several months and successfully developed a consensus recommendation for a revised composition for the Coordinating Committee, which was accepted by the Coordinating Committee and has been incorporated into the amended and revised DURSA that is currently undergoing Federal clearance. While the revised composition of the Coordinating Committee will not be final until the amended DURSA is approved by the Participants following clearance, I am sharing the composition as part of this testimony because I believe that the Coordinating Committee has successfully applied the foundational principles and balanced competing interests to arrive at a scalable and effective representational model for the Committee's ongoing activities.

Following the approval of the amended DURSA, the Coordinating Committee will be composed of the following:

- At least one representative selected by each "Affiliation Group;"
- One representative from each of the ten "Charter Participants;"
- One representative from ONC.

The "Affiliation Group" model was designed by the Strategic Issues Task Group to effectively group and align the interests of Participants that share similar interests, objectives and structures. This is a first generation representational model. Today, each non-Federal Exchange Participant must be sponsored by a Federal agency through a contract vehicle. For now, the Task Group believes the Participant's agency affiliation is the most objective way to sort Participants into Affiliation Groups. It provides a rational way of aligning Participants' interests and grouping them with others who are working towards the same performance targets and implementing the same technical specifications. The Task Group and the Coordinating Committee recognize, however, that once the Federal contractor requirement for non-Federal Participants is lifted, the Coordinating Committee will need to redefine the affiliation groups based on characteristics and metrics that are relevant at that time.

The “Charter Participants” have vital institutional knowledge about the origins of the Coordinating Committee and evolution of the Exchange, expertise in the operations of the Coordinating Committee, and have exhibited dedication to the Exchange. Keeping them engaged on the Coordinating Committee will ensure the continuity that is critical to the success of any board or committee.

The Coordinating Committee believes that this new model for the Committee will enable it to best support the needs of the Participants for the foreseeable future.

### **Coordinating Committee Successes and Challenges**

Confronting and addressing the challenges of supporting an operational “network of networks” has been a very rewarding experience for me as the Chair of the Coordinating Committee. Our first Chair, Mr. James Borland of the Social Security Administration, set a very high bar for leadership as he guided us through the early days of the Coordinating Committee’s existence. We have successfully addressed the many difficult, complex, cutting-edge issues that are implicated by widespread data exchange. Our success is due in large part to the dedication of the Participants and their willingness to bring to bear the best and the brightest from their respective organizations.

The Participants and the individuals who represent them are actively involved in information exchange both within the Exchange and outside of the Exchange. The fact that the Participants have real world experience with health information exchange has been critical to the success of the Coordinating Committee. Instead of discussing theoretical issues, whether policy or technology, the Participants and their representatives have been able to discuss practical issues using concrete, realistic examples based on their experiences. These discussions have allowed the Participants to reach realistic and implementable resolutions, whether interim or permanent, on issues that are essential to establishing trust among the Participants.

The Coordinating Committee has faced a variety of challenges, two of which are particularly relevant to the Work Group’s effort. The first challenge is operating as part of a multi-layer governance and management structure. The second is the Coordinating Committee’s inability to operate in a completely open and transparent manner.

As discussed above, the Coordinating Committee is one layer of a multi-layer governance and management infrastructure. At the Exchange level, governance and management includes the Coordinating Committee, Technical Committee and various teams within ONC. Each of the Participants also have their own governance and management structures, many of which are quite complex. Participants that are HIEs often have several layers of governance both at the HIE level and at the individual HIE member level. This creates key interdependencies which directly impact the Coordinating Committee’s ability to function.

Recognizing and delineating the interdependencies among these various layers was an important first step for the Coordinating Committee, Technical Committee, ONC and Participants. Actually developing and implementing the proper mechanisms and degree of coordination and collaboration between these various layers has been a significant challenge. One of the most challenging aspects of this coordination and collaboration is the lack of a clear reporting hierarchy and division of responsibilities. While the grants

of authority for the Coordinating Committee and Technical Committee are set forth in the DURSA, there was confusion about which layer of the governance infrastructure was truly responsible for making final decisions about various issues that impact the Exchange. Even after a year, there continue to be discussions between the Coordinating Committee, Technical Committee, ONC and the Participants about who is ultimately responsible for making decisions about certain topics that impact the Exchange. If the Governance Work Group chooses to recommend a multi-layered governance infrastructure, it should clearly delineate ultimate responsibility for each governance function and the way in which the layers will interact, coordinate and collaborate to achieve the best outcomes.

The other challenge that I want to discuss is the inability to operate in an acceptably open and transparent manner because of the Federal contract requirement for participation in the Exchange. This challenge, which is the same one that was faced by the Cooperative from the beginning of its work, affects the Coordinating Committee and its Task Groups. With the exception of discussions of confidential information about Participants, all meetings of the Coordinating Committee are open, but only to those who are under contract with a Federal agency related to the Exchange. This requirement stems from the fact that the Coordinating Committee is not an “official” body. It is an activity undertaken pursuant to contracts and grants awarded by Federal agencies related to the Exchange. As a result, the Coordinating Committee is prohibited from opening its meetings, including Task Group meetings, to the general public. This restriction is closely related to the restriction on participation which requires that all non-Federal Participants have a Federal sponsor (see footnote 2 above).

It is my hope that the governance rulemaking efforts will result in the removal of the Federal sponsorship requirement for participation to allow widespread participation in the Exchange, and will give the Coordinating Committee the ability to operate more openly and transparently so that we can share all of our great work much more broadly. This will require a balance between public engagement and the operational requirements of the Exchange. I would encourage the Governance Work Group to create open and transparent governance processes that truly allow for meaningful participation and input from a wide range of stakeholders including those who are actually on the forefront engaging the exchange of health information.

I would like to thank the Governance Work Group for allowing me the opportunity to present this testimony. I am available to provide any additional information that the Work Group may find helpful.