

Office of the National Coordinator for Health IT, Health IT Standards Committee

Jonathan B. Perlin, Chair
John D. Halamka, Vice Chair

Meeting Date and Time: Wednesday, March 26, 2014, 10:00 AM to 12:45 PM EDT

Name and Address of Submitting Organization:

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Dr. Perlin, Dr. Halamka, and Members of the Committee:

As always, I'd like to preface my comments with a sincere "Thank You" to the members of both the HIT Policy Committee and the HIT Standards Committee, as well as the members of the various HITPC and HITSC workgroups and task forces, and our friends at ONC, for the work that you're doing. We think your efforts are critical to the future of our healthcare system and our citizens.

I would like to comment on the concerns that were expressed during the HIT Standards Committee virtual meeting today regarding advance directives and the "state variations on the form of structured data that would need to be captured." I believe the specific comment was that, if it is the HIT Policy Committee's intent to require the use of structured data with respect to advance directives in Stage 3, that would cause the Standards Task Force's evaluation of applicable standards maturity and developer effort to be significantly different from the conclusions submitted to the HIT Standards Committee during Dr. Halamka's presentation.

I realize that few, if any, of the members of either the HIT Policy Committee or the HIT Standards Committee (or of the Committees' respective workgroups and task forces) are full-time lawyers focusing all of their attention on the issues surrounding advance directives, so I just wanted to refer you to the extensive published writings of people like Charlie Sabatino, with the ABA Commission on Law and Aging, Bud Hammes with Gundersen Lutheran, Dr. Joanne Lynn, Director of the Center on Elder Care and Advanced Illness for Altarum Institute, and a number of other thought leaders in the advance care planning space, who have pointed out that almost all states have reciprocity provisions in their advance directives laws; that there is a line of Supreme Court cases (and a 2008 report on advance directives and advance care planning submitted to Congress by the Department of Health and Human Services) supporting the argument for substance over form when it comes to advance directives; and that the Full Faith and Credit Clause of the United States Constitution actually *requires* states to recognize the and honor advance directives from other states.

My point is that, from a legal standpoint, the concerns expressed with respect to "state variations on the form of structured data that would need to be captured" may not be as significant as they seem – and from a technology development effort standpoint, I believe that Leslie Kelly Hall has already demonstrated that advance directive structured and unstructured content can be captured and transported within the C-CDA. Perhaps most importantly, MyDirectives has doctors and healthcare systems across the nation telling us they don't care what form the information comes in, they want it – they *need* it – in order to provide quality care to patients.

Needless to say, we're happy to serve as a reference for any of the ONC staff or the Policy or Standards Committee members as you research and consider these issues further. Thank you again for the opportunity to comment.