

Health Information Technology Policy Committee Final Summary Of the December 7, 2011 Meeting

KEY TOPICS

1. Call to Order

Mary Jo Deering, Office of the National Coordinator (ONC), welcomed participants to the 30th meeting of the Health Information Technology Policy Committee (HITPC). She reminded the group that this was a Federal Advisory Committee (FACA) meeting, with an opportunity for public comments, and that a summary of the meeting would be available on the ONC Website. She called the roll, and turned the meeting over to the newly appointed Deputy National Coordinator for Programs and Policy, Judy Murphy, in the absence of the National Coordinator for Health Information Technology and Committee Chairperson Farzad Mostashari.

2. Opening Remarks

Judy Murphy talked about this being an exciting time. Participation in meaningful use is increasing. ONC will work with the Center for Medicare and Medicaid Services (CMS) to achieve a significant increase in participation in 2012. During a recent meeting of grantees, a call for increased efforts for assistance from Regional Education Centers (RECs) and state health information exchanges (HIEs) was made. In the coming months ONC staff will pay more attention to supporting large organizations. The tipping point for meaningful use is close at hand. ONC staff wants to help providers to figure out what they need for adoption. Another big challenge is the standards and interoperability efforts. There are a number of other on-going efforts within ONC for privacy and security, usability, and clinical decision support. Success appears to be inevitable.

3. Review of the Agenda

HITPC Vice Chairperson Paul Tang reviewed the agenda items. He asked for a motion and second for approval of the minutes of the November 9, 2011 meeting, which had been distributed in advance of the meeting. Members approved the minutes by a voice vote with no objections heard. No one abstained. Tang said that he has several attribution edits to the minutes that he would pass on to Deering.

Action Item #1: The Committee approved by voice vote the minutes from the November 9, 2011 HITPC meeting. Tang will submit his edits to Deering.

4. Update on CMS' Meaningful Use Activities

Rob Anthony, CMS, showed slides on the status of meaningful use participation. The Medicaid slides were based on provisional and estimated numbers; final numbers for November 2011 will be posted on the Website. Overall, both active registrations and payments have increased sharply in recent months. Anthony explained that he expected increases would continue through the end of the calendar year; eligible providers (EPs) can attest through February 2012 for stage 1. Approximately 57.23% of eligible hospitals (EHs)

have registered, compared to 29.59% of EPs. He reported that through the fourth month of the program, the most “popular menu objectives” were drug formulary, immunization registry, and patient list. Least popular with EPs were transition of care summary and patient reminders, and for EHs, syndromic surveillance. He emphasized that small numbers and characteristics of early adopters prevented drawing general conclusions about specific measures. CMS is conducting field surveys and meeting with representatives of professional associations to identify barriers. Unsuccessful attestations are those for which one or more objectives failed to meet threshold. He indicated that CMS is pleased with the relatively high performance rates. Staff is carefully watching reportable public health data.

Q and A

Tang asked for clarification on the paid hospitals slide. Anthony repeated his earlier statement that 1211 is the number of payments, which includes both Medicare and Medicaid payments. Therefore, it does not correspond to the unduplicated number of hospitals. Approximately 15% of EHs have attested.

Devin McGraw asked about attesting to security and privacy risk assessments. She said that some providers have admitted in an anonymous survey to checking the measure as done although they did not in fact conduct these assessments. Anthony responded that data were not compiled on the yes-no measures. Every provider that attested on meaningful use attested yes to the risk assessment. The attestations are subject to audit.

Another member noted a pattern of higher performance on measures that were also required or recognized by other organizations. For example, the high performance on immunizations is likely due to its being a requirement of the Joint Commission. He concluded that alignment has a positive effect on uptake and suggested that additional analysis be undertaken of his hypothesis. He went on to ask whether additional analysis of the quality and content of patient education is planned. Anthony replied that CMS is conducting field surveys to investigate these types of questions and to find out how certain objectives are used. The member suggested asking the Joint Committee to do some of this work.

Larry Wolf inquired about the low performance on measures of information exchange. Anthony acknowledged that exchange is challenging. He wondered whether it will increase once a critical mass of meaningful users is achieved. CMS is watching these measures.

Art Davidson asked about the penetration of participation across state Medicaid programs. Anthony reported that 37 states are on-board with the Medicaid program. New York and California are expected to come on-board in December. To date, there is not a participating Medicaid provider in every state. Anthony did not have equivalent information on Medicare providers. He went on to say that the N is currently too small for conducting a regional analysis. CMS is talking about coordinating its analysis with the ONC RECs.

Tang reminded the members that the time allocated for the topic had expired. A member who attempted to comment experienced a telephonic connection problem and was unable to comment.

Judy Faulkner described a conversation with a retired solo practitioner who said that his colleagues were lack in checking forms. She wondered about the list of attested hospitals, which had been promised at a previous meeting. Anthony explained that the list was posted in November on the data and reports page of the Website. It covers the period through September. An updated list will be posted quarterly. The law requires posting of Medicare payments annually.

5. Update on CMS' Health Innovation Challenge

Kelsey P. Gowin, CMS, reviewed slides that were based on the information contained in the recent announcement of the innovations grant. The mission of the Innovation Center is to be a constructive and trustworthy partner in identifying, testing, and spreading new models of care and payment that continuously improve health and health care. She referred to the Center's menu of nine options, saying that several, such as innovations advisors, a program for dual eligibles, and comprehensive primary care, did not appear on the graphic slide. In acknowledgment that the menu list was relative prescriptive, she explained that CMS had launched a new grant program for innovations. Requirements include a broad group of partners, models ready to scale within 6 months, workforce development, and a plan for self sustainability within 3 years. She went on to repeat the information contained in the grant announcement on the review selection criteria, information for applicants, eligible applicants and dates of the two award cycles.

Q and A

Tang exclaimed that the program was an exciting one.

Christine Bechtel asked for more focus on care coordination. Gowin indicated that the importance of care coordination was assumed. Bechtel asked that a requirement for a plan for involving patients and families be incorporated in the selection criteria. Gowin emphasized that she would not speak to the specifics of the grant review; a plan for patient involvement may be important in evaluating diffusion. She expressed her hope that applications would include such plans.

David Bates observed that the Innovation Center has neglected to recognize the importance of the early stages of innovation. The allocation of 6 months for scale-up is too brief a time period. He reported that Israel encourages early innovation. He went on to say that the Center does not place sufficient focus on IT innovation. Gowin responded that the two grant cycles may allow time for organizations in early stages of innovation to prepare applications for the second cycle. She said that staff is conversing with ONC representatives around IT coordination.

Another member expressed concern about the low weight being given to evaluation, saying that past experience indicates that what is deemed successful locally does not necessarily pan out for scale-up. Gowin assured him that the CMS will contract for an external evaluation, which will consider factors related to diffusion. The member advised her to pay attention to the program design, pointing out that some designs better lend themselves to evaluation than do others.

Josh Sharfstein noted that states are not eligible to apply, yet public private partnerships are generally considered to be good models for innovation. Gowin said that the types of eligible organizations did provide avenues for public partners other than states.

6. Update from ONC's Office of the Chief Privacy Officer – Report on eConsent, mHealth, and Data-Segmentation Projects and on Privacy Attitudes Survey

Joy Pritts, Chief Privacy Officer, showed slides and described five new projects located in her office. The Data Segmentation Privacy Initiative is based on extensive collaboration with other ONC components and many stakeholders. It focuses on defining the use case, user stories, and requirements supporting a standards-based privacy protection architecture and the application of data segmentation for interchange across systems. The initiative will test the HITSC recommended standards for privacy metadata tags. It builds on the President's Council of Advisors on Standards and Technology's (PCAST) vision and the HITSC recommendations for the development of metadata tags to be used for exchanging data across organizational structures while maintaining the privacy and security of the information.

Katherine Marchesini described the e-consent trial project, which is based on the HITPC's individual choice recommendations of September 2010 and is intended to design, develop, and pilot innovative ways to: educate and inform individuals of their options for individual choice in a clinical setting to share their health information electronically; ensure that individuals are knowledgeable participants in decisions about sharing their electronic health information in a clinical environment; and electronically obtain and record meaningful choice from individuals in a clinical setting. E-consent pilots will be conducted at health provider sites within the Western New York Health Information Exchange, which is a Beacon Community. Best practices will be identified and reported.

Penelope Hughes, an ONC contractor, talked about m-Health, saying that mobile is considered broadly. Focus groups will be conducted to collect qualitative data on consumer attitudes and preferences related to m-Health privacy and security. Privacy and security issues, including potential safeguards, will be described. The results are expected to inform policy discussions within HHS.

Next, Pritts described a project to survey changes in public attitudes on EHR privacy and security over the coming 5-year period. 2000 adults will be selected through random digit dial (RDD+). Issues to be explored include the extent to which individuals are concerned about the privacy and security of their records, withholding of information from providers due to privacy and security concerns, and whether individuals want providers to use EHRs and exchange information electronically despite any privacy or security concerns they may have. She said that her office is collaborating with the National Cancer Institute to field core questions in the ongoing Health Information National Trends Surveys (HINTS), which will provide some data even if restricted budgets prohibit annual surveys over the 5-year period.

Pritts went on to talk about new efforts in the area of technical assistance. Her office has added staff and they will focus on meaningful use stage 1. She said that she did not want the risk assessment to be a barrier to the achievement of meaningful use. Providers must attest to having done risk assessments within a specific time period. She explained that she had

expected the RECs to assist providers with risk assessments but subsequently found that the RECs are approaching this very differently. Although some RECs have incorporated assistance with risk assessments into their business models, others are doing only minimal work in this area. Consequently, her office has shifted its emphasis from grantees to the user level. The goal is to simplify materials so that providers can conduct risk assessments pretty much on their own. Apparently many organizations are not familiar with this part of the HIPAA rules and are not conducting risk assessments. As part of technical assistance, simplified risk assessment tools and on-line training modules for small offices will be offered.

Q and A

Art Davidson asked how data segmentation and testing e-consent in the Beacon Community are related. Pritts replied that the two projects are coordinated. They overlap. Use cases will be shared. But because of the requirements of the procurement process, the standards may not be available in time for the e-test.

Josh Sharfstein wanted more information about the survey questions on competence. Pritts informed him that questions will ask about the areas in which people say they are comfortable in sharing data. Sharfstein wondered about offering resources to groups found to lack knowledge about and competence in sharing their data. Pritts explained that the survey is intended to establish baseline information and to identify issues. It is not designed to address problems. She said that the Office of Civil Rights (OCR) is currently working on materials to inform and assist consumers. Different approaches are needed.

David Lansky spoke about the legal barriers and misunderstandings concerning registries and sharing identifiable data. He asked what, if anything, was being done about a guidance for data aggregation for quality measuring. Pritts responded that nothing is being done at this time. ONC is waiting for the ACA final regulations.

McGraw informed the group that the Agency for Healthcare Research and Quality had published something relevant to Lansky's question on registries. She offered to send the link to Pritts. Lansky suggested looking at the output from a recent White House meeting of the PCAST.

Another member commented that organizations in the Buffalo area could help with interagency cooperation across the Veterans Affairs (VA) program and the Beacon sites. He said that data segmentation and e-consent were big issues with VA and Department of Defense patients seen at private facilities. Pritts affirmed that the VA is very involved with the ONC data segmentation project.

Judy Faulkner pointed out the importance of people understanding that sometimes the choice is between sharing information and receiving life saving care. Pritts said that the implications of the absence of sharing are part of the inquiry.

Marc Probst observed that although there may be few best practices around sharing, they should be exposed. He wondered if Pritts was coordinating with the numerous on-going

efforts on e-consent. Pritts described a hearing on the topic that was convened last year for which ONC did considerable outreach to collect information. She observed that work on privacy and security is never ending. Grantees have been sharing information on an internal Website, which will soon be moved to a site available to the public.

In response to a question on when and how results of the projects will be made available, staff predicted that the e-consent pilot results will be available in the early fall of 2012. Pritts offered to provide the Tiger Team with status reports. Preliminary results on the data segmentation project are expected in summer 2012. Tang requested that quarterly reports be made to the HITPC.

7. Privacy & Security Tiger Team – Draft Recommendations on Security

Paul Egerman, Co-Chair, introduced the team's report on the security rule gap analysis performed by ONC and NIST and the draft recommendations based on the findings. The analysis compared the HIPAA security rule with other common information security frameworks. Deven McGraw, Co-Chair, talked from slides that summarized the findings. The analysis concluded that the security rule had not evolved as had other security frameworks. The analysis focused in particular in looking at ISO 27001 and the Federal Information Security Management Act (FISMA). She explained that the team concluded that it, as well as the HITPC, lacked the expertise for overseeing a detailed analysis of the specific gaps and coming up with recommendations to address them. Nevertheless, the team did make four high-level recommendations on security policy. Egerman read the first two recommendations as listed on the slides and in the meeting materials. He noted that security policy is ever changing. He said that #2 is essentially existing HIPAA policy. McGraw talked about recommendation #3 and observed that OCR guidances are not always disseminated effectively. Egerman read #4.

Discussion

David Lansky asked how well security policy is currently working. He inquired whether the team had discussed the m-health survey and its implications with Pritts. McGraw replied that it would be helpful for the survey results to inform rules or guidances. However, the team has not yet connected with the survey. A balance between security and reduction of obstacles to communication with patients must be found. She acknowledged that at this time she did not know what additional security issues should be considered; the point is for HHS to have a mechanism to analyze gaps and update policy on an on-going basis. She reiterated that HHS, not the team, asked for the gap analysis. Lansky asked about empirical evidence on frequency of and trends in breaches to identify the needs for policy revision. Egerman talked about the importance of trust, saying that most breaches are the result of not following rules rather than the lack of rules. The recommendations are not intended to say that the current rule is or is not sufficient.

Pritts responded to Lansky, informing him that breach reports are analyzed in HHS. Most privacy breaches occur via snooping while security breaches most frequently result from the loss and theft of hardware. Therefore, this is where ONC is focusing its resources. Providers are not encrypting their data. She said that she is trying to discover the reasons for non-

encrypting: Is it due to the increased use of mobile devices? The rapid change in IT makes it difficult for providers to keep up.

Marc Probst asked that an on-going or continuing gap analysis be added to recommendation #4. Egerman and McGraw agreed.

Another question about recommendation #4 was followed by a comment from McGraw that in cloud computing, security was the responsibility of the provider of the cloud. Pritts interjected that cloud computing is not always the answer for security; the responsibility cannot easily be handed off.

In response to other questions, McGraw clarified that ISO was not excluded. She emphasized that the team could not take credit for either the work of the gap analysis or its conceptualization

Judy Faulkner opined on differentiating purposeful violations and unintentional violations. People may fail to report breaches due to fears of penalties. She described a situation in which excessive penalties were applied to staff whose error was not intentional. Dealing with the follow up to violations, such as providing the required credit checks for persons affected, are very expensive. McGraw said that federal regulators have a range of penalties that can be applied. Agencies should take the findings from the gap analysis and consider appropriate action. Recommendations pertaining to state laws are not within the purview of the HITPC.

Someone said that security receives less attention than privacy. Perhaps the group should recommend comprehensive security legislation. McGraw explained that the Tiger Team is advisory to ONC although occasionally it takes on broader HHS issues. To date, it has not advocated before the congress. She reported that she, Egerman, and Pritts are defining issues to work on in 2012 to increase trust for stage 3.

Pritts reminded them that HITECH amended HIPAA regarding criminal penalties for theft of data. The administration recently completed a green paper on Internet privacy that delineates baseline protections based on fair information practices. A white paper is forthcoming. Another amendment of HITECH pertained to prosecution of individuals.

Tang called for action on the four recommendations with the addition of an on-going gap analysis in #4 as requested by Probst. It was moved and seconded to approve the amended recommendations. The motion carried by voice vote with none opposed. No one abstained.

Action Item #2: The four recommendations on security presented by the Tiger Team, amended to incorporate on-going gap analyses in #4, were approved.

8. Update from NCVHS on ACA Section 10109

Walter Suarez and Judy Warren, Co-Chairs, Sub-committee in Standards, National Committee on Vital and Health Statistics (NCVHS) reported. They began by showing and talking about their slides that described the work of the NCVHS and the current standards

environment. The ACA not only expanded NCVHS responsibilities, Section 10109 directs the NCVHS and the HIT FACAs to work together to inform policy in specific areas:

- The application process for enrollment of health care providers
- Whether the HIPAA standards and operating rules should apply to automobile insurance, worker's compensation, and other property and casualty insurance programs
- Whether standardized forms could apply to financial audits required by health plans, federal and state agencies, and other relevant entities.
- Whether there could be greater transparency and consistency of methods used to establish health plan claim edits
- Whether health plans should be required to publish timeliness of payment rules

Suarez described the output from hearings convened in November on the above areas. He concluded with several general observations:

- Though there seems to be interest in addressing the topics of Section 10109, there is a sense that any substantive effort may be premature or at least awkward timing because of other pressures and priorities
- Certain topics could be identified for future study and analysis, but funding would be required to do an adequate service to any such project
- Some of the work at CMS, including efforts by Medicare and Medicaid in the areas of claim edits and audits, are a source of frustration due to the lack of perceived transparency and industry participation
- Final rules on claims standards are due January 14

The NCVHA will draft letters of Observations and Recommendations (January 2012). The letters will be distributed to the HIT Committees for input (January-February 2012) and then submitted to the secretary (February 2012).

Q and A

Tang said that the HITPC would be pleased to contribute to the letters. Members asked no questions.

9. Public Comment

Robin Raiford, Advisory Board Committee, commended Joy Pritts for the additions of renowned persons to her staff. She also voiced appreciation for the work of many persons, particularly Judy Murphy

Tang thanked ONC staff and Committee members for their work in 2011.

SUMMARY OF ACTION ITEMS:

Action Item #1: The Committee approved by voice vote the minutes from the November 9, 2011 HITPC meeting. Tang will submit his edits to Deering.

Action Item #2: The four recommendations on security presented by the Tiger Team, amended to incorporate on-going gap analyses in #4, were approved.

Meeting Materials

Agenda

Tiger Team draft recommendations – security protections

Privacy and Security presentation slides

NCVHS presentation slides

Medicare & Medicaid EHR Incentive Programs presentation slides

Innovation presentation slides