

Testimony before the Senator Communications and Technology Committee

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Senator Folmer, distinguished members of Senate Communications and Technology Committee, my name is Mark Jacobs, Chief Information Officer for the Delaware Health Information Network (DHIN). I want to commend you for your leadership in drafting Senate Bill 8 that would allow for broader adoption of electronic sharing of patient records in Pennsylvania.

I am a lifelong resident of Pennsylvania, have lived and worked in Senator Folmer's district and have been employed by several of PA's leading healthcare institutions. I was on the Board of the Pennsylvania eHealth Initiative as past Vice Chair and committee Chair of the Business and Technology Committee. I co-authored several white papers including "Ensuring Privacy and Security of Health Information in Pennsylvania" and "Building a Sustainable Model for Health Information Exchange".

I received both undergraduate and graduate education in Health Administration from Pennsylvania higher education institutions. I've also taught part-time at two of Pennsylvania's universities. I have served on many community boards, and was once an elected school board member. In my early days I worked with a local city planning department and a short stint with the Pennsylvania Economy League, so I have also experienced the public sector and know of its strengths and challenges.

I feel I have a broad understanding of Pennsylvania, its geography, its government and its healthcare sector, and yet I struggle to understand why Pennsylvania is still not further along compared to other states in electronically sharing patient records.

Dr. Jan Lee submitted written testimony on Friday from the DHIN, so I will try not to duplicate what she already stated. The DHIN was statutorily created as a not-for-profit IRC 501(c)(3) instrumentality of the state of Delaware to advance the creation of a statewide health information and electronic data interchange network for public and for the benefit of all citizens of Delaware. Delaware is not alone in passing similar legislation. Other states include Illinois, who passed legislation for the Health Information Exchange and Technology Act and created the Illinois Health Information Exchange (ILHIE) authority in order to facilitate the sharing of health records among health care providers within Illinois. Oklahoma also created an authority which is an instrumentality of the State.

The DHIN is not a health care provider and is not subject to claims under the Title 18 of the Delaware Health Care Medical Negligence Insurance Code which says that no person or entity

who participates or subscribes to the services or information provided by the DHIN shall be liable in any action for damages or costs of any nature, in law or equity, which result solely from that person's use or failure to use DHIN information or data that was imputed or retrieved in accordance with the rules or regulations of the DHIN. In addition, no person shall be subject to antitrust or unfair competition liability based on membership or participation in the DHIN as the State's sanctioned provider of health information services that are deemed to be essential to governmental function for the public health and safety.

In other states, health record sharing is still a maturing area in terms of liability and there are many open issues to those who may need to share. As Dr. Lee suggested regarding Senate Bill 8, we did not see the strength of the bill, in terms of immunity from liability. Although the Act provides protection to providers and their employees, agents, and representatives, it appears that those who will be "sending" health care data do so without any explicit immunity. This may be one of the underlying issues that have limited providers and HIEs from sharing health records more broadly.

There is a growing need around health record sharing under Healthcare Reform and the proposed rule Stage 2 - Meaningful Use requirements. In Delaware a broader number of providers have enrolled in information sharing with the DHIN (85%). The progress toward sharing patient records has been phenomenal and our June 2012 goal is 95%. I have witnessed this myself in that only if I make an appointment with a physician in Delaware, I can have tests at any hospital or laboratory and my results are shared electronically between any care provider I choose, conveniently, without paper or delay.

Although many of Delaware's patients may not be fully aware of the DHIN's existence, care providers sign-off on the use of the DHIN as their sole source for results today. The DHIN, as an information sharing tool, is considered integral to the Delaware care delivery and is celebrating its 5th anniversary. Delaware providers are literally connected by a health records exchange grid they would have thought ludicrous 15 years ago. Ironically, the hard work was done by Delaware leadership who committed themselves to establishing the necessary legislation to support and protections that provide the foundation for electronic record sharing today. This positions Delaware uniquely for Health Care reform and providers for Meaningful Use – Stage 2. In some ways the DHIN works discretely in governance and consensus building, and functions as a silent utility, for the good of the patient in Delaware.

Like Pennsylvania, Delaware and the DHIN spent a good many years on developing consensus around what and how health records would be shared. Phase one services were delivering lab results and Admission, Discharge, Transfer (ADT) summaries to providers to reduce the cost of results delivery. Looking at industry average for "traditional" results delivery (\$1.30 - \$1.80) the aggregated cost for results delivery through the DHIN is approximately .25 cents. Today, over 86% of Delaware healthcare providers have adopted DHIN. The goal this year is to have 95% of health care providers. The DHIN has a confederated deployment model with a statewide Community Master Patient index of approximately 1.2 million unique patients in our database, 30% of who are out-of-state patients. The DHIN's Community Master Patient Index holds over

50,000 Pennsylvania residents who received care in Delaware. DHIN has achieved over \$2.0 million in savings for our hospital that send us data, another \$1.0 million in savings may be achieved once additional providers sign-off on DHIN. The DHIN also provides Auto-print/Fax services, results delivery in a standard Results Format, Lab and Pathology Results, Radiology Reports, Admission Face Sheets, Transcribed Reports, Patient Record Search/Patient Inquiry, a Secure Inbox, Interfaces to practice Electronic Health Records, Secure Messaging (DIRECT), Orders Capability, Care Summaries exporting and routing capabilities, Public Health Syndromic, Lab and Immunization Reporting.

In terms of Privacy of patient health records, the DHIN safeguards the privacy and security of data being exchanged and employs strict measures to control access to patient health information including very strong security and encryption, access, logging and auditing of the exchange of data. Participants of the DHIN have roles that functionally vary from transaction to transaction. Participants in the DHIN may be a "Covered Entity" or a "Business Associate", as those terms is defined in the HIPAA Regulations, in regards to different transactions with different participants. Each participant in the DHIN agrees to be bound to proper use and their obligations under HIPAA and state privacy laws. Delaware, by agreement is an Opt-Out State whereby every patient or responsible guardian has an authority to request non-participation in the DHIN, but their data is automatically included in DHIN unless they explicitly opt-out of participation. DHIN makes available the option for those Delawareans who choose not to have their test results or medical information accessible to healthcare providers (including emergency room) and that they may choose to participate at any time by reversing their decision in the future.

Making key clinical information available to providers that was once fractured across hospitals is no longer an obstacle for the citizens of Delaware. The privacy and security is in place, the collaboration to put the foundation to share all in place because of the legislation.

In a recent book published by HIMSS that I participated in writing, "Health Information Exchange Formation Guide: The Authoritative Guide for Planning and Forming an HIE in your State", we looked at the successful states who adopted legislation to facilitation of health record sharing. The key ingredients for success included: 1) Trust and transparency rules and competition by parties involved in the governance were always left at the doorstep 2) Sharing patient records was always about the patient 3) patient privacy and security was always of paramount importance 4) stakeholder collaboration was always diverse, top down, deep and wide and 5) there was clear value in what health care record information was exchanged.

Dr. Jan Lee noted in her written testimony that healthcare and health information should be about the patient, and information should follow the patient. We sometimes are stuck in the mindset where the caregiver sets the rules and patients must be compliant (just like workers obeyed the factory owners of

yesteryear). There is so much potential for ourselves and our patients if we stop focusing on reasons **not** to share patient records versus sharing health records that can provide efficiencies, safety and quality for the prevention, treatment, and management of illness. Maybe Pennsylvanian's can become more involved in their care if they can participate.

If Senate Bill 8 is really about the ability to share health records easily, and then look no further, technology is the easy part. If what we are trying to accomplish is truly about the patient of Pennsylvanians, then patients do go to Delaware and across other state lines. Some PA residents seek out Delaware providers for their care; others receive care in Delaware while on vacation. Likewise, a number of Delaware patients are referred to (and come to Pennsylvania, particularly physicians in nearby Philadelphia and Chester County. The value of being able to share health information allows for better care provision at a lower cost so long as health records follow the patient. It is imperative that this legislation be modified and passed to so that Pennsylvania patients can also benefit from the technology available today.

Thank You