



Testimony of  
**Robert Torres, Pennsylvania Health Information Technology Coordinator**  
before the  
**Senate Communications & Technology Committee**  
regarding  
**Senate Bill 8**

March 7, 2012 – 9:30 a.m. – Hearing Room 8E-A, East Wing

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Chairman Folmer, Chairman Farnese and members of the committee, thank you for inviting me here again to discuss some of the work being done by the Pennsylvania eHealth Collaborative to facilitate the electronic exchange of health information, and, more specifically, the importance to our work of legislation such as Senate Bill 8.

As you may recall, an executive order in July 2011 established the Pennsylvania eHealth Collaborative, the objective of which is to enable the use of information technology and advance health information exchange (HIE) in order to improve healthcare quality and efficiency, ensure patient safety and provide secure, confidential access to health information.

### **Pennsylvania eHealth Collaborative and the Strategic Plan**

In November, George White and I presented an update to this committee on the efforts of the Pennsylvania eHealth Collaborative. We had re-engaged stakeholders in a very open and transparent planning process in order to determine a market-driven approach to guide the direction of this project and to achieve support to sustain this initiative over the long term.

We had organized five stakeholder working committees – Business and Operations; Finance and Sustainability; Legal, Privacy and Security; Communication and Outreach; and Evaluation and Performance. These committees worked aggressively to draft recommendations, which formed the basis of our proposed strategic plan.

In December, we invited stakeholder review and comment on the proposed plan. Over 30 organizations – the Pennsylvania Medical Society, the Hospital & Healthsystem Association of Pennsylvania, Pennsylvania eHealth Initiative, TechQuest Pennsylvania, all of the Pennsylvania Blue Cross and Blue Shield companies, the Insurance Federation of Pennsylvania and the Pennsylvania Pharmacists Association to name a few – endorsed our proposed strategic plan. Having considered stakeholder feedback, we will be submitting the final strategic and operational plans to the Office of the National Coordinator for Health Information Technology (ONC) this week.

### **The Strategic Plan and Creation of an Authority**

Based on significant stakeholder feedback, the proposed strategic plan recommends the creation of an authority for a finite period of time. A governance entity is required to serve as a convener, adopt the required interoperability standards, manage the shared services, and adopt certification programs for participating entities to ensure that they are abiding by defined requirements for information protection and exchange standards.

The benefits of an authority include efficiency in grant administration, cost savings in physical and operational infrastructure during the grant period, and sufficient time allowable for a fair and open process to select a successor entity. Establishing a defined term for the authority limits the growth of government and the susceptibility of the governing entity to political changes (a strong stakeholder concern).

At some point after the end of the grant, the plan forecasts sunset of the authority and transition to an independent, nonprofit organization. Over 20 states have opted to use nonprofit organizations to assume the governance of their HIE efforts. Although considered, maintaining HIE operations within state government was not favored by the stakeholder community.

In fact, since the beginning of this effort, emphasis has been placed on developing a market-driven approach that does not rely upon public funds to sustain the project over the long-term. Private sector stakeholders have accepted this premise but want to be represented with a formal decision-making role on the board if they are expected to sustain this project financially.

### **Creation of an Authority and Senate Bill 8**

Our strategic plan defines several legislative requirements, one of which is the creation via legislation of an authority, composed of private and public stakeholders, to assume the role of governing entity by mid-2012. Because of the importance of this initiative and the tight timeframes imposed upon us by the federal government's funding requirements, it is important to move this legislation forward as quickly as possible. Ideally, we should begin establishing the authority by July 2012.

With some revisions to Senate Bill 8, we believe this legislation generally meets the requirements in our strategic plan. While we would like to discuss in more detail our recommended changes, for the purpose of this hearing, we are highlighting the areas for suggested revisions as follows:

#### **Chapter 1 – Preliminary Provisions**

Even though knowledge about HIE continues to grow, we believe an introductory section for findings and purpose would be appropriate. This section would outline the importance of and need for both HIE and an entity to design and implement the HIE.

Second, immediately following the findings and purpose section would be the definition section, in which we recommend the use of the federal statutory definitions where possible along with the addition (and deletion) of several terms used throughout our suggested amendatory language.

#### **Chapter 3 – Authority**

We agree that the Authority should be established as an independent agency with powers and duties vested in and exercised by a board. Further, staff of the Authority should be employees of the commonwealth.

Serious consideration should be given to the composition of the board. Most people who have served on a board, team or committee would agree that having the correct number of members with the right background, skill, experience, knowledge and/or education is important to that group functioning effectively. While no magic number of members with particular qualifications exists to fit every situation, we suggest fewer members along with changes to the overall composition of the board.

Some expansion of the board's powers and duties also may be necessary. In particular, the ability to employ staff, establish rules of participation and drive interoperability via work with participants and governmental entities should be considered. The Authority should have the ability to employ and fund staff as necessary to carry out the purpose of the act and should not have to rely upon staff assigned by the Governor.

Last, the Pennsylvania eHealth Collaborative suggests use of a more definitive sunset provision. Language would include not simply an expiration date but provisions leading up to and following that date. Prior to sunset, the Authority would be responsible for an evaluation and report that recommends steps for an orderly transition to a successor entity. Amendatory language related to the successor entity should include components for financial stability, commitment to purpose and stakeholders, experience and vision for progress.

## Chapter 7 – Consent and Confidentiality of Health Information

The Pennsylvania eHealth Collaborative recommends modifications to this Chapter to strengthen provisions concerning promulgation of a standardized patient consent form. The form should educate the patient about HIE, explain a patient's rights and limits to those rights, and allow for refusal to participate in a HIE.

Changes also should be considered to the disclosure provisions to clarify the Authority's role in the exchange of information and its limited access to individual health information records. Patient information that would be shared across the exchange already is protected by the Right-to-Know Law. However, since stakeholders consistently raised this concern, we suggest affirming the exemption in the legislation but in Chapter 9 instead of Chapter 7.

## Chapter 9 – Miscellaneous Provisions

Consideration should be given to add a severability provision as well as to expand the immunity section into a broader section on Nonapplicability. Because we believe that immunity from civil liability for libel or slander already exists, we suggest removing this language. Instead, we propose adding the equivalent of sovereign immunity protection to the Authority, its board and staff. Although the Authority would be subject to the Right-to-Know Law, the fact that health information and personally identifying information are not to be considered public records should be stated. Further, we propose protecting the Authority from lawsuits to which the Authority is not a party (third-party lawsuits). We agree that the provisions of the Act should take effect immediately.

## Closing

In conclusion, the Pennsylvania eHealth Collaborative looks forward to implementing the recommendations endorsed by the stakeholders. Senate Bill 8 takes a critical step in defining the governing entity and providing a formal role for the stakeholders, who are expected to sustain this effort in the future. I again thank you for the opportunity via this hearing to share some high-level comments concerning this necessary and important piece of legislation. I look forward to meeting with appropriate committee members or staff to provide more detailed input. If you have any questions, I would be happy to answer them.