Health Information Technology Oversight Council
Privacy and Security Forum
May 25, 2010

Agenda

- Introduction and overview
- Oregon HIE Planning Progress Report
- Panel
- Breakout discussion
- Lessons Learned/Evaluation
- Next steps/Closing comments
- Adjourn

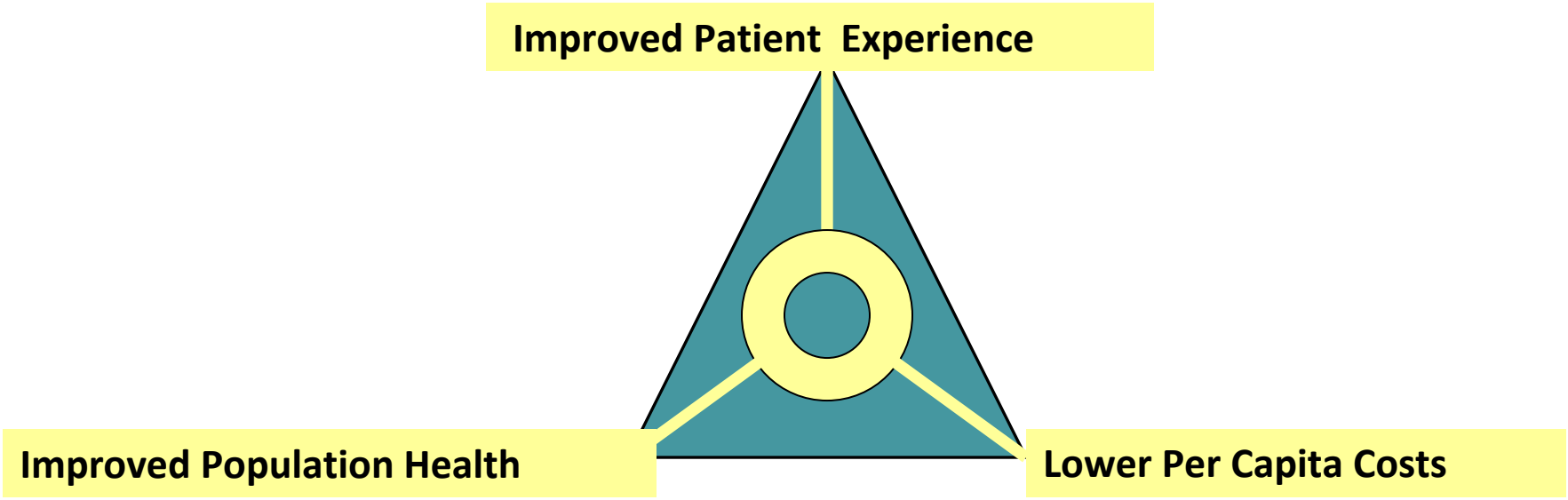
Meeting Outcomes

- Provide overview of HIE Planning Process
- Awareness and updates of statewide planning activities on Privacy & Security
- Provide background information on Electronic Health Records and Privacy Issues
- Gather input from participants
- Update on additional opportunities for participation

Electronic Health Records

- "To improve the quality of our health care while lowering its cost, we will make the immediate investments necessary to ensure that within five years, all of America's medical records are computerized … It just won't save billions of dollars and thousands of jobs – it will save lives." (January 5, 2009)

Oregon Health Authority Triple Aim Goal



1. Improve the lifelong health of all Oregonians
2. Increase the quality, reliability, and availability of care for all Oregonians
3. Lower or contain the cost of care so it is affordable to everyone

Selected Highlights

- July 2009: Initial HIT Stakeholder Meeting (75 people attended)
- Fall 2009 – ongoing : Presentations to Stakeholder Groups (over 25 meetings so far)
- September 2009: Letter of Intent submitted to ONC for Statewide HIE Cooperative Agreement
- October 2009: First HITOC meeting
- October 2009: Statewide HIE Cooperative Agreement Application submitted to ONC
- October 2009 – April 2010: Monthly HITOC Updates (sent to almost 900 stakeholders monthly)
- November 2009: HITOC Stakeholder Survey and Targeted Stakeholder Meetings (gathered input from over 175 stakeholders)

HITOC Activities

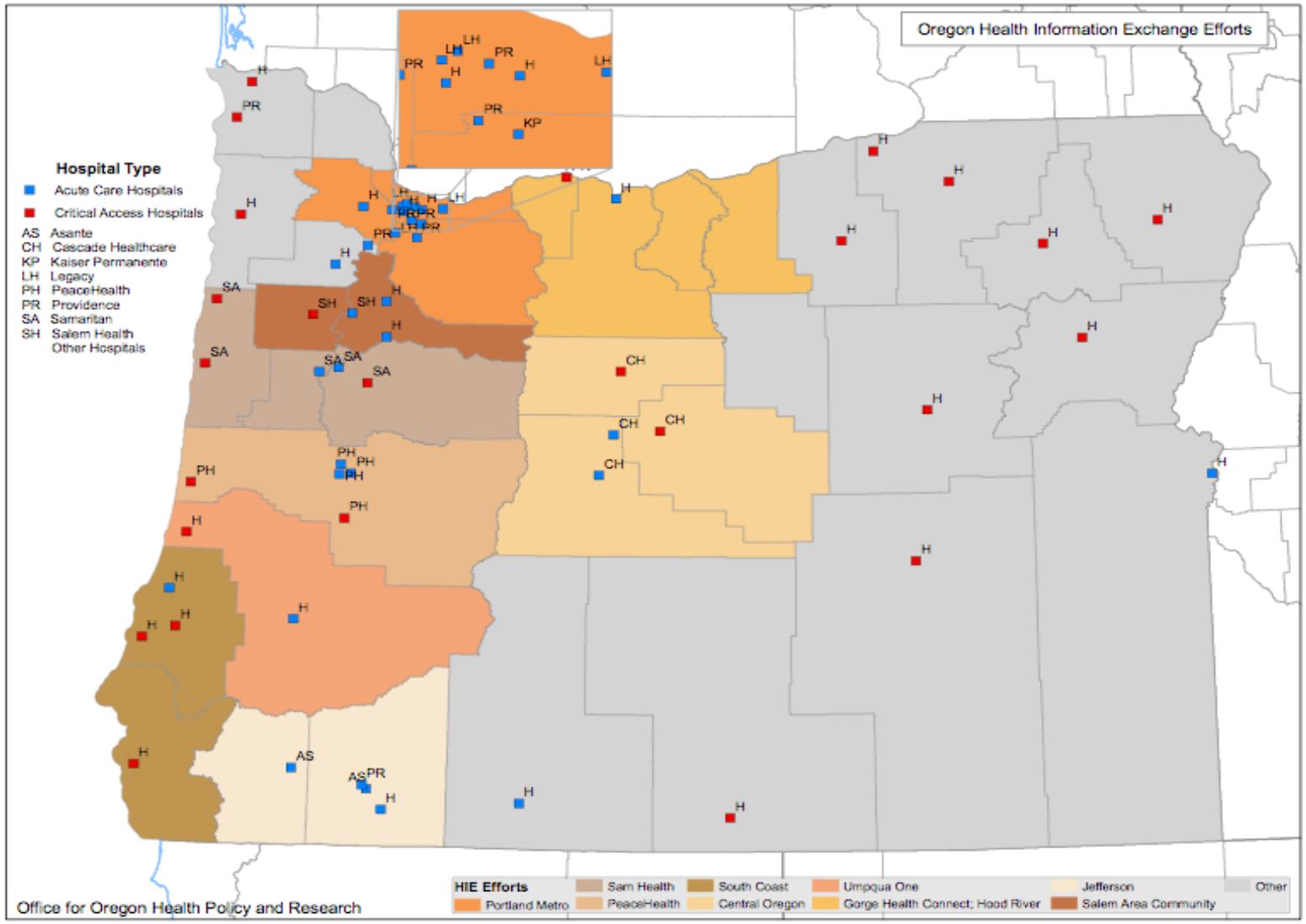
Selected Highlights

- January – May 2010: 8 Strategic Workgroup Meetings
- February 2010: Cooperative Agreement Awarded ($8.58M)
- February 2010: OCHIN named as Oregon's REC ($13.2M)
- February – April 2010: 3 Stakeholder Webinars to Update Progress and Gather Input (reaching 125 stakeholders)
- March 2010: Updated EHR Survey Shows Oregon Adoption Ahead of National Rates
- March 2010: Medicaid P-APD for HIT Planning Awarded
- April 2010: Survey of County Public Health Departments
- April 2010: OHSU ($5.8M) & PCC ($625K)receive HIT Workforce grants
- April 15, 2010: HIO Summit Held (60 people from 40 organizations)
- May 25, 2010: Privacy & Security Forum (over 125 registrants)

Core Components of Strategic Plan

- Phasing
- Support Local HIOs
- Light Central Services
- Role of State
  - Facilitate
  - Communicate
  - Coordinate
  - Standards & Certification

State of Oregon HIE Coverage



Phasing and HIE Domains

Domain	Phase 1	Phase 2	Phase 3
Governance	Adoption of policies, requirements, standards and agreements - Statewide standards and/or certifying body could be HITOC in some form	Non-profit entity created in conjunction with financial sustainability plan and legislative approval, to act as central contracting agency, with small-scale operations	Non-profit develops larger operations to support HIE, if needed
Technology	Selection and Adoption of Standards and requirements, including strategies for meeting the needs of underserved areas	Implementation and operation of centralized services, as necessary	Operation of HIE services to cover gaps and underserved areas, if needed
Legal & Policy	HITOC develops and implements Accountability & Oversight Program, interstate agreements, security protocols, and other standards and policies	To be determined in Phase 1	Undetermined
Business Architecture and Operations	Run certification program for local HIOs, designs common technology-based services	Operation of common technology and technical support services	Additional services, as necessary
Finance	Finalize services costs Determine services revenue and pricing models	Create and staff non-profit organization, implement Certification Program and Technology and Support Services	Expand services and support offering, as necessary

PRIVACY AND SECURITY OVERVIEW

ARRA's Impact on HIPAA

1. Applies some of the HIPAA rules directly to business associates and other non-HIPAA covered entities for electronic HIE

2. Non-covered entities, such as local HIOs, are now required to have business associate agreements with covered entities

3. Authorizes increased civil monetary penalties for HIPAA violations: cap on individual violations raised from $100 to $50,000; cap on total year raised from $25,000 to $1.5 million

4. Further defines which actions constitute a breach (including some inadvertent disclosures)

5. Requires an accounting of disclosures to a patient upon request

6. Grants authority to state attorneys general to enforce HIPAA

Security Framework: the "Four A's"

In order to protect the privacy and security of your protected health information, we will institute policies, procedures, and technical processes that address the following four questions:

- **Access: Who** can access the information available through HIE?
- **Authorization: Which functions** is a user authorized to perform? (i.e. to view, contribute, and/or save data)
- **Authentication: How will the identity** of an authorized user **be verified**?
- **Audit:** What means will be in place to **monitor use** and **investigate breaches**?

Security Framework: the "Four A's"

- For every aspect of security, Oregon HIE will follow national standards and best practices developed and tested around the country.

Examples of existing national standards and best practice:

- Use **digital certificates** to authenticate the identity of an authorized organizational entity (i.e. an HIO or a provider's office). Assign **unique usernames and passwords** within participating entities to **authenticate** the identity of users.

- Use **role-based access** within participating entities to dictate **access** levels and **authorized** functions (i.e. to view, save, or add data) for the varying roles within their organization (i.e. physician, nurse, or administrative staff may have different access levels and authorized functions).

- **Securely encrypt data** so that it is not exposed to an unauthorized or unauthenticated user.

- **Audit logs** will be stored about the type of data accessed, by whom, and when, but will not store the actual health information. Patients will have access to these audit logs pertaining to their record.

Scope

1. The scope of the discussion is limited to the use and disclosure of **clinical information (protected health information, or PHI)**, for the purposes of **treatment, payment, and health care operations.**

2. **HIPAA:**

   The Privacy Rule permits covered entities (i.e. medical providers, health plans) to use and disclose PHI without written patient authorization for purposes related to treatment, payment, and health care operations. On the other hand, HIPAA permits, but does not require, a covered entity to seek patient *consent for uses and disclosures of PHI for those purposes, but does not explicitly define consent or specify the necessary content of a consent form or the process by which an entity should obtain consent.**

Source: ONC White Paper on Consent

Consent Options & Definitions

Policy	Description
No Consent	Health information of patients is automatically included—patients cannot opt out
Opt Out	Default is for health information of patients to be included automatically, but the patient can opt-out completely
Opt Out with exceptions	Default is for health information of patients to be included, but the patient can opt out completely or allow only select data to be included
Opt In	Default is that no patient health information is included; patients must actively express consent to be included, but if they do so then their information must be all in or all out
Opt In with restrictions	Default is that no patient health information is made available, but the patient may allow a subset of select data to be included

Benefits and Limitations

	Key Benefits	Key Limitations
No Consent	Maximizes availability of PHI for HIE goals; minimizes administrative burden	No accommodation of individual preference; does not build trust
Opt Out	Provides patient choice/control; Rapidly achieves higher levels of participation- more data available for HIE goals; decreases administrative burden	Requires action on the part of patients to deny consent
Opt In	Allows for explicit, affirmative consent for participation	Requires intensive outreach efforts; lower levels of participation; increases administrative time/resources
All in or All out	Procedurally simpler to implement	No granularity of patient preference; may discourage participation by those w/SPHI
With Restrictions or Exceptions	Provides for more patient control; builds patient willingness/trust in participating in HIE	Procedurally and technologically complex to implement; full clinical data may not be available for care

North Carolina HISPC Analysis

Goals	No Choice	Opt Out	Opt In	Opt Out w/ Exceptions	Opt In w/ Restrictions
High Quality of Care	5	3-4	2	3-4	1
Provider Business Impact	5	4	3	2	1
Confidence in HIE	1	4-5	4-5	2-3	2-3
Liability and Laws	1	2-3	2-3	4	5
Total rating:	12	13-16	11-13	11-13	9-10

1= worst rating, 5= best rating

Other States

State	Consent Policy
New Mexico	Opt In
Rhode Island	Opt In w/restrictions (granularity by provider)
Massachusetts	Opt In
New York	Opt In (except for one-to-one exchanges)
Maryland	Opt Out
Pennsylvania	Opt Out for general PHI; Opt In for sensitive PHI
New Hampshire	Opt Out
Maine	Opt Out
Tennessee	Opt Out
Minnesota	Opt Out of RLS (w/exceptions- by provider); Opt In to query
Delaware	No consent for lab data, etc.; Opt Out of the query function
Indiana	No consent
Wisconsin	No consent

Opt Out with Exceptions

A. Opt Out for General PHI:

- Excludes Specially Protected Health Information (SPHI) from HIE, at least for Phase 1
- Would include an Opt In option for inclusion of any or all SPHI
- An examination of state laws that define SPHI would be conducted during Phase 1, in line with Oregon's HISPC recommendations, to determine the appropriateness of the protections and the feasibility of implementing these protections in an electronic environment, with the possibility of legislative changes during later phases

B. Medical Emergency:

- If a patient opts out, will his or her PHI will be available for medical emergency?

C. Operations:

- Opt Out forms (for General PHI), Opt In forms (for SPHI), and information on the process and implications of each, are made available at a patient's first visit to provider, and also available online
- If a patient opts out, any query for their records is returned as a null query (the existence or location of their records will not be confirmed or provided)

Decision for Opt Out with Exceptions based on:

1. The ONC analysis;
2. North Carolina's HISPC analysis;
3. The trend among other states' HIE planning and existing operations;
4. The general value of HIE to key stakeholders and overall;
5. The OHA's Triple Aim

On-Going Analysis

Specialized Workgroups will be established through HITOC during Phase 1 to conduct analyses of the following Legal/Policy issues and make policy recommendations:

1. The practical feasibility of excluding SPHI from HIE
2. The administrative burden on providers of managing consent
3. Will local HIOs or participants in local HIOs be allowed to choose a more stringent consent model than the one designated by the state? How will the liability concerns of local HIOs be addressed?
4. How will the consent system function (who, where, when, how)?
5. How will Oregon's consent policy impact its inter-state HIE activities?- Need to discuss and coordinate with neighboring states
6. Education and engagement of patients/consumers regarding the consent model

Panel

- Jerry Cohen, Oregon State Director, AARP
- BJ Cavnor, Public Policy Coordinator, Cascade Aids Project
- Grieg Anderson, Volunteer, American Diabetes Association

Table Discussions

- Please provide input on proposed framework
  - Is the plan directionally correct?
  - Is the consent model the right option for now?
  - Is there anything missing/things to be added?
- What are the best methods and tools to reach out and educate consumers around the state?
- What Workgroups should be formed going forward, i.e., Privacy & Security, Consumer Outreach & Education

LESSONS LEARNED EVALUATION

June – August Schedule Highlights

1. **HITOC Review Draft HIE Plan:** June 3
2. **HITOC Release Draft HIE Plan for Review:** June 17
3. **Stakeholder Feedback Meetings:** late-June to mid-July
4. **HITOC Finalize HIE Plan:** August 5
5. **Statewide HIE Strategic and Operational Plans Due to ONC:** August 31, 2010

Thank you for your participation

If you need additional information, have questions, or want to provide input:

HITOC.Info@state.or.us

503-373-7859 (Joan Lockwood)

Resources: HITOC website

http://www.oregon.gov/OHPPR/HITOC/index.shtml

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