



*Health IT Now! Coalitions Hosts a Briefing on Capitol Hill – “Improving Patient Safety Through Technology”*

Yesterday (9/14/11), the Health IT Now! Coalition hosted a briefing on Capitol Hill. The briefing focused on the legal issues surrounding health IT and highlighted Representative Tom Marino’s (R-PA) forthcoming legislation to create a system for reporting errors that occur when using EHRs or HIEs. The process would provide an incentive to identify problems, report them to existing certification bodies, and receive feedback on what went wrong and how to fix it.

Seven panelists from varying backgrounds all addressed the audience. Summaries of their statements are below:

**Drew Kent, Congressman Tom Marino’s Legislative Director:** Kent explained that the upcoming bill would provide legal protections for Medicare and Medicaid providers who are members of the Meaningful Use program and health IT adopters. The proposed legislation will help eliminate legal reservations that often prevent providers from adopting health IT. Congressman Marino hopes to introduce the bill sometime next week. We at the Health IT Now! Coalition will be sure to update the site as the legislation moves forward.

**Doug Gentile, Allscripts:** Doug Gentile brought a different perspective to the discussion. As a practicing physician, he addressed the connection between malpractice and electronic health records. The integration of health IT eliminates old errors but also provides a new set of potential errors and challenges. It is important that doctors are able to report patient problems/events with assurance that they will not be held accountable for other practitioners’ mistakes. Overwhelming amounts of data provide health care providers with great resources, but can also add to the amount of material doctors either need to or feel obligated to look through. He addressed a concern about e-discovery and what is discoverable and then how it is subsequently used

**Michael Morgan, Netsmart:** Netsmart Technologies provides systems for mental health providers, and Morgan noted that this crucial component of the health population is left out of the health IT discussion. Morgan’s presentation did a phenomenal job of showing how EHR systems would streamline charts and clarify processes for health care professionals and patients alike. Especially telling were examples of essentially illegible doctor handwriting. Mistakes in script or illegible documentation can lead not only to confusion but also to incorrect treatment. EHR systems allow for comprehensive and clear documentation of medical history as well as alert doctors and pharmacists to potential drug interactions.

**Heather Free, BioScrip Pharmacy:** Ms. Free addressed the topic from a pharmacist’s perspective. She noted how helpful it would be to have EHRs that would allow pharmacists to establish and maintain a direct line of contact to other pharmacists as well as doctors. Health information technologies would help track patterns of addicts and alert pharmacies, alert pharmacists of drug interactions as well as provide many other resources for consumers, doctors and pharmacists alike.

**Gerry Hinkley:** Gerry Hinkley contributed a legal perspective to the panel. Hinkley began by addressing HIPPA and noting that it was more about information exchange and less about privacy. State to state inconsistencies in privacy make transmission of information a challenge for health care providers. To eradicate this issue, Hinkley suggested a national privacy framework. Standards for privacy, data transfer and consent need to be uniform to ensure proper care. This would allow doctors to connect with their patients and also allow patients to connect to their own personal medical data.

**Michelle Dougherty, American Health Information Management Association:** Michelle Dougherty commented on the fact that legal cases surrounding health IT, have become less about actual medical negligence and more about flaws in the EHR system. The health care industry needs to look at EHR's as digital evidence and as business records to substantiate clinical practices. Current legal statutes must evolve with the changes in technology. Digital evidence provides a completely different set of evidentiary standards and this must be acknowledged and courts must retrofit to adapt to these changes.

**Jim Bialick, Newborn Coalition:** Bialick echoed Gerry Hinkley's comments in addressing state-by-state issues. Each state implements federal programs but at very different levels. A lot of EHR's practice restrictive exchange. This prevents certain critical pieces of information from being delivered to both internal and external systems. If central IT systems can only accept data from same-brand devices, significant amounts of material can be lost. There must be more open systems that allow for different brand devices to speak to one another so that all communications are acknowledged, received and passed along.

HITN Supports the Marino legislation. Congressman Marino (R-PA) has suggested:

- Creating a system for reporting errors that occur when using EHRs or HIEs. The process would provide an incentive to identify problems, report them to existing certification bodies, and receive feedback on what went wrong and how to fix it.
  - Information in the reports would be privileged and confidential, similar to bipartisan protections enacted by Congress in 2006 to report medical errors.
  - This creates an incentive to address problems, rather than covering them up.
- Limiting e-discovery to ensure EHRs aren't used as an easy source of lawsuits. Discovery would have to be related to an adverse event. A 2009 Study by the FTC showed "evidence that hospitals are 33% less likely to adopt electronic medical records if there are state laws that facilitate the use of electronic records in court.
- De-risking technology use by establishing process protections that ensure parties responsible for errors are held accountable.

These changes would promote patient safety and create a learning process that quickly identifies errors and solves them before adverse events occur. By creating clarity in the legal environment related to EHRs and HIEs, Congress could go a long way in incentivizing adoption, further promoting use of technology that can lower medication and other errors that harm patients.

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