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Health

L-5 Recent Changes in Kansas Health Information Technology

This article provides background information on the development of health information technology in Kansas and changes made during the 2013 Legislative Session to the Kansas Health Information Technology and Exchange Act, which was renamed the Kansas Health Information Technology Act.

Background

Beginning in 2005, the State facilitated meetings with Kansas stakeholders to discuss and develop the statewide infrastructure to support an intra-state and inter-state Health Information Exchange (HIE). HIE is intended to provide the ability to exchange health information electronically as a means of improving health care quality and safety.

A funding opportunity under the American Recovery and Reinvestment Act in August 2009 through the Office of the National Coordinator (ONC) to provide state grants promoted health information technology, and the State applied for the funding. The funding was to assist in the creation and implementation of governance, policy, and technical infrastructure to enable standards-based HIE and a high-performance health care system. The Kansas Department of Health and Environment (KDHE) formed the Kansas e-Health Advisory Council (eHAC) to provide stakeholder input to assist KDHE in the preparation of the state's application for the State HIE Grant. In October 2009, KDHE submitted the application requesting $9,010,066 to develop the state's HIE. After completion of the grant application, KDHE asked e-HAC to continue providing assistance. Kansas received a Notice of Grant Award for the full amount of the request in February 2010.

The receipt of grant funding required Kansas to name the entities in the State responsible for grant compliance and for the development of an HIE. KDHE and e-HAC worked together to create the documents to form a public-private partnership, the Kansas Health Information Exchange, Inc. (KHIE), in response to Governor's Executive Order 10-6 issued in June 2010. As recommended by the Secretary of Health and Environment (Secretary) and e-HAC, KDHE became the state agency responsible for the planning and implementation of health information technology. KHIE became the state-designated entity to ensure collaborative statewide HIE development in Kansas. KHIE came into existence as a 17 member Board of Directors in November 2010.

KHIE had two major areas of focus: solidifying its corporate structure (including hiring staff) and developing policies addressing all aspects of HIE in Kansas. The efforts of KHIE resulted in the creation of the Kansas Health Information Technology Exchange Act (KHITE), which passed as part of 2011 HB 2182 (a bill containing multiple health related matters). KHITE was designed to provide consistency between state health information security and privacy and the federal Health Information Portability and Accountability Act (HIPAA). KHIE also designed and implemented a process for approving Health Information Organizations (HIOs) in Kansas, which ensured alignment with State policies and goals. Two HIOs have been licensed to operate and provided service in Kansas: the Kansas Health Information Network (KHIN) and the Lewis and Clark Information Exchange (LACIE). These vendors of HIE services in Kansas are to provide statewide service and direct services to medical providers who are not ready to move to full electronic health records or to automated HIE. Further, KHIE developed an education plan to inform patients and medical providers of the value of HIE.

In the process of policy development for Kansas, KHIE determined it would not provide public statewide technology services directly to health care providers in the state, and instead allowed the continued development of privately managed Regional Health Information Organizations to provide direct service to health care providers. KHIE decided that a majority of the technologies necessary to share data across networks would be provided through memorandums of understanding between approved HIOs as a condition of certification as KHIE Board-approved HIOs.

Reorganization of Health Information Technology

A recommendation for reorganization to transition responsibilities from KHIE to KDHE occurred after discussions regarding KHIE's business model, the cost of continuing the KHIE Board and its staff beyond the life of the ONC grant, and the purpose of the Board after the decision not to provide core technologies to facilitate data transmissions. The goal was to achieve better service coordination with additional state resources and with a reduction in operating costs, which could impact or deter provider participation.

The recommended transition in responsibility from KHIE to KDHE and other amendments to KHITE were contained in 2013 SB 210. Testimony in favor of the bill provided by the Deputy Secretary of Health and Environment at the hearing before the Senate Committee on Public Health and Welfare indicated a drastic change in scope from the initial state plan that informed the development of the original KHIE. Originally, KDHE was to be funded through the collection of fees associated with providing HIOs services to medical providers in Kansas. Without the fees, KHIE needed to identify how to fund an annual budget of $400,000 to $500,000. According to the representative, the KHIE Board determined KDHE would be the preferred and appropriate entity to administer the regulatory functions previously assigned to the Board, in light of the evolution of KHIE's responsibilities and the capabilities of KDHE.

Among those speaking in opposition to 2013 SB 210 at the Senate Committee hearing was a representative of the Kansas Association for Justice, who indicated the Association generally was neutral to components of the bill, but opposed language prohibiting disclosure of protected health information by approved HIOs. The representative stated such language in the bill would be detrimental to the expeditious and fair resolution to all parties of a legal claim, whether needed by an injured person to prove their case or by someone defending themselves in litigation. The representative further indicated the effect of the prohibited disclosure language in the bill would be to deny patients access to their health information and would violate HIPAA.

During Conference Committee, 2013 SB 210, as amended by the Senate Committee, was placed in 2013 Sub. for HB 2183, along with other health related bills. In Conference Committee, KHITE was further amended to identify the appointing entity for certain members of the Advisory Council on Health Information Technology (Council).

Sub. for HB 2183 replaced, KHITE with the Kansas Health Information Technology Act (Act). The

oversight and authorization to establish standards for the operation of statewide and regional HIOs was transferred from KHIE to KDHE. A new Council was created with the responsibility for providing advice to the Secretary. References in KHITE to "health information exchange" generally were replaced with "the sharing of information electronically."

Purpose of the Act

The stated purpose of the Act is "to harmonize state law with the HIPAA privacy rule with respect to individual access to protected health information, proper safeguarding of protected health information, and the use and disclosure of protected health information for purposes of facilitating the development and use of health information technology and the sharing of health information electronically." (The U.S. Department of Health and Human Services issued the Privacy Rule to implement national standards for the protection of health information pursuant to HIPAA.)

Definition Changes

The terms "approved health information organization," "covered entity," "health care provider," "health information organization," and "participation agreement" were revised. Additionally, the term "health information technology" was amended to specify that the term includes an electronic health record, a personal health record, the sharing of health information electronically, electronic order entry, and electronic decision support.

The following terms were deleted from the Act: "corporation" (this term referred to KHIE), "designated record set," "DPOA-HC," "electronic protected health information," "health care clearinghouse," "health plan," "hybrid entity," "interoperability," "public health authority," and "standard authorization form."

Definitions for "authorization" and "department" (referencing KDHE) were added to the Act. "Authorization" was defined as a document that permits a covered entity to use or disclose protected health information for purposes other than to carry out treatment, payment or health care operations, and that complies with the requirements of 45 CFR § 160.508.

Oversight and Standards

Under the Act, as amended, KDHE assumes the duties to establish and revise the standards for the approval and operation of the statewide and regional HIOs operating in Kansas, duties which originally were the responsibility of KHIE. KDHE is required to ensure that approved HIOs operate within the state in a manner consistent with the protection of the security and privacy of health information of the citizens of Kansas.

State General Fund expenditures for administration, operation, or oversight of the HIOs are prohibited, with one exception: the Secretary may make operational expenditures to adopt and administer the rules and regulations necessary to implement the Act.

The standards established in the Act include the following: adherence to nationally recognized standards for interoperability (the capacity of two or more information systems to share information or data in an accurate, effective, secure, and consistent manner); adoption and adherence to rules promulgated by KDHE regarding access to and use and disclosure of protected health information maintained by or on an approved HIO; and development of procedures for entering into and enforcing the terms of participation agreements with covered entities that satisfy the requirements established by KDHE pursuant to participation agreement provisions of the Act.

Health Information Organizations

Under the Act, KDHE is directed to establish requirements to be used by approved HIOs in participation agreements with covered entities. Requirements KDHE must provide include specifications of:

- Procedures by which an individual's protected health information will be disclosed by covered entities, collected by approved HIOs, and shared with other participating covered entities and with the KDHE, as required by law for public health purposes;
- Procedures by which an individual may elect to restrict the disclosure of protected health information by approved HIOs to covered entities; and
- Purposes for and procedures by which a covered entity can access an individual's protected health information from the approved HIO, including access to restricted information needed to properly treat the individual in an emergency situation.

Procedural requirements for the written notice provided by covered entities to individuals and their personal representatives also are addressed in the Act.

Protected health information in the possession of an approved HIO is not subject to discovery, subpoena, or other means of legal compulsion for the release of such information to any person or entity. In addition, an approved HIO cannot be compelled by a request for production, subpoena, court order, or otherwise, to disclose an individual's protected health information.

Advisory Council on Health Information Technology

The Act also provides for an Advisory Council on Health Information Technology (Council) within the Division of Health in KDHE. The Council is to serve in an advisory role to the Secretary and to provide input on the continued development of policy and direction related to HIE in Kansas. Appointments to the Council are made through the Secretary.

The Council consists of 23 voting members who, with the exception of the Governor and Secretary or their designees, serve staggered terms from the commencement of the Council. Term lengths vary from one to four years and are determined by lot. Members of the Council are:

- Secretary of Health and Environment, or designee;
- Governor, or designee;
- Four legislators selected by the Chairpersons and ranking minority members of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare;
- Members appointed by the Secretary, as follows:
  - Two consumer representatives;
  - One employer representative;
  - One payer representative;
- Members appointed by the Secretary from a list of three names submitted by the entity noted in parentheses:
  - One local health department representative (Kansas Association of Local Health Departments);
  - Three hospital representatives, one of which must be involved in the administration of a critical access hospital (three names submitted for each position by the Kansas Hospital Association);
  - Three members, at least two of which must be practicing physicians and one of the physicians must be a primary care specialist (three names submitted for each position by the Kansas Medical Society);
  - Two pharmacist representatives, at least one of which must be a practicing pharmacist (Kansas Pharmacists Association); and
- One member representing each of the following entities and appointed by the Secretary from a list of three names provided by each entity:
  - University of Kansas Center for Health Information;
  - Kansas Foundation for Medical Care;
  - Kansas Optometric Association; and
  - Association of Community Mental Health Centers of Kansas.

Following a member's initial term of service on the Council, he or she may be reappointed and, if appointed, serves a four year term. The Act

provides for the filling of vacancies and removal of Council members, requires meetings of the Council at least four times per year and at such times as deemed appropriate by the Council or called by the Secretary, and provides for compensation and expenses as provided in existing law. Members attending Council meetings or subcommittee meetings authorized by the Council are to be paid mileage and applicable expenses consistent with policies established by the Council from time-to-time.

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