

# Privacy and Security Solutions for Interoperable Health Information Exchange

## West Virginia's FINAL Implementation Plan Report (Deliverable No. 6)

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## 1.0 Background:

### 1.1 Purpose and Scope of the Report:

As specified by RTI, the purpose of this report "...is to document practical approaches and actionable steps for implementing solutions identified in the final Analysis of Solutions Report."

Specifically, this report will document the process used by the West Virginia Implementation Plan Work Group (IPWG) in collaboration with the Solutions Work Group (SWG) to arrive at a set of actionable activities designed to address each of the key solutions identified in West Virginia's Final Solutions Report. Our proposed Implementation Plan will present a practical and detailed framework including activities that will lead to the fulfillment of the project's short- and long-term objectives. The plan will identify specific stakeholders that will be tasked with implementation responsibilities necessary in order to ensure that West Virginia is able to sustain an ongoing process leading towards the successful, safe and secure exchange of interoperable health information.

The IPWG tested the reality of many of the recommendations contained in this report by soliciting public, provider and consumer response through a series of three (3) public meetings convened around the state. In several instances, input was solicited from State Government stakeholders through a series of agency-specific meetings and questionnaires. Comments and recommendations acquired through these exchanges assisted the IPWG in framing many of its final recommendations.

As the West Virginia Health Information Security and Privacy Collaboration (WV HISPC) project evolves, the IPWG recommends that additional opportunities be created for the public to learn more about how West Virginia intends to accomplish its long-term project objectives once the RTI-contract terms and West Virginia moves forward with its implementation strategy. This recommendation is consistent with the dynamic process envisioned by all of the WV HISPC work groups and West Virginia Health Information Network (WVHIN) Board.

### 1.2 Key Assumptions, Limitations and Related Background Information

The successful and timely implementation of the solutions recommended by the SWG will be dependent on the endorsement and ongoing monitoring of the process by the WVHIN Board of Directors. The Board will serve as the process "champion" ensuring that implementation strategies are fully vetted and continuous progress is made towards their accomplishment. West Virginia is fortunate in that the HIN Board has demonstrated a strong commitment to the HISPC project and has indicated its desire to promote the work of the WV HISPC team once the RTI contract terminates. The WVHIN Board passed a resolution at its January 26, 2007, meeting establishing an *ad hoc* committee tasked with the ongoing

oversight of the WV HISPC activities. The Board is currently preparing a charter for the committee and will soon make committee appointments. Once appointed, members of the ad hoc committee will meet with WV HISPC project team managers to devise a transition plan for the seamless and simple transfer of responsibilities and process oversight from the HISPC to the WV HIN leadership. This process will include a discussion and prioritization of tasks that should be designated for immediate WV HIN follow up and an itemization of tasks and activities that could receive deferred attention.

Complementing the WVHIN Board's oversight of the implementation process will be those stakeholders directly impacted by the proposed changes. These include health care consumers, providers, and officials from both the executive and legislative branches of State government. Given the nature of the solutions proposed by the SWG, it is clear that many of the key implementation strategies offered by the IPWG will require some change in existing State statute or modification in existing State agency rules and/or regulations. State leadership will need to be demonstrated in order for other implementation-related activities to be fulfilled as well.

West Virginia is fortunate that the WV HISPC team, including members of the IPWG and SWG, hold high-level policy and/or management positions in many of the private- and public-sector agencies and organizations that will be tasked with various implementation activities. This resource represents a significant asset that should facilitate the fulfillment of critical implementation activities. In fact, due to this leadership the West Virginia State Legislature just enacted two of the WV HISPC's "high priority" legislative proposals. These include **H. B. 3184**, a bill to amend an existing State Statute relating to confidentiality, disclosure and authorization for disclosure of mental health information obtained in the course of treatment or evaluation of individuals and **Senate Bill No. 69**, a bill to amend an existing State Statute by adding a new section relating generally to the authorization of electronic prescribing

Due to the complexity of certain other subjects (i.e. information collected, maintained and reported in Public Health registries; and exchange of health-related information between employer and employee) addressed by the Variations Work Group (VWG) and SWG, it is clear that additional time will be required for these matters to be fully reviewed. For these types of issues, the recommended implementation activities will be analytically related. Small work groups have been identified and tasked with the responsibility of conducting a more thorough analysis of the subject matter/topic than what was allowed under the limitations imposed by the RTI contract terms. The outcome and timeline for these activities will be refined shortly. Progress reporting for each work group will be directed to the WV HIN Board. This will ensure that steady progress is being made and actionable solutions and implementation activities are being implemented.

Early in the planning process it was determined that meaningful solutions for complex issues would require extended study, thorough analysis and patient and persistent public promotion. It was the

consensus of the combined SWG and IPWG that West Virginia undertake a balanced and measured approach to implementation. It was the opinion of the work group and our HISPC team generally, that a well-planned, incremental approach would yield West Virginia's best opportunity for success. We believe a process has now been developed that will support the continuation of the efforts started by the WV HISPC work groups towards achieving West Virginia's long term health information exchange objectives.

## 2.0 Summary of Interim Analysis of Solutions Report

### 2.1 Solutions Identified in the Interim Analysis of Solutions Report

The following chart summarizes the solutions identified in the West Virginia Interim Analysis of Solutions Report for which implementations plans are being proposed. Details of those implementation plans will be described in Section IV of this report.

**Table 2-1: Barriers and Solutions**

Key Barrier	Solution
Limit sharing information for <b>treatment</b> purposes to only “minimum necessary.”	<p>Targeted educational programs and training for health care professionals in all provider types.</p> <p>Targeted educational programs and training for key support staff, e.g., office managers, medical records.</p> <p>Negotiate with HIT vendors with largest “footprint” in WV to include appropriate HIPAA procedures related to sharing for treatment as part of implementation training of their customers.</p>
Limit imposed by WV law involving sharing of personal information of patients in state-operated facilities; all sharing, even for treatment and payment, has to be authorized by patient.	<p>Explore change in WV law; determine reasons for existing restrictions.</p> <p>Continue work with behavioral health sub-group to fully explore this and other issues; generate issues and solutions.</p>
Limit sharing for treatment purposes for HIV patients to only patient-authorized exchange.	<p>Review all state restrictions with Bureau of Public Health; convene consumer/advocacy group to discuss issues.</p> <p>Based on above, develop and deliver targeted education/training to health care professionals and institutional provider staff. Note: this barrier is a result of business practices and not law.</p>
Various practices related to sharing information with law enforcement (and corrections) staff in compliance with HIPAA and other laws.	<p>Targeted training/educational program for law enforcement and public officials (including judges) to clarify HIPAA requirements.</p> <p>Development of consistent protocols for local, county, and state law enforcement staff for the acquisition, maintenance, security, and exchange of individual health information.</p>

Key Barrier	Solution
WV law forbids anything except “wet” signature; forbids use of third party between physician and pharmacy.	Work with Governor’s Office and WVHIN Board to draft and pass legislation.
Sharing of health information with employers. Variety of concerns, e.g., “minimum necessary,” need for authorization by patient/employee; if authorized, HIPAA puts no limit on what can be shared. This issue represents one of the most compelling for consumers and elicits strongest negative reactions.	Explore need for additional state law to clarify what can be requested and uses of such information; must take into account various legitimate reasons employer needs health care information to manage benefits and monitor use of benefits – FLMA, Workman’s Comp. Will involve intensive work with a number of stakeholders.
Release of information for payment purposes in WV related to mental health and substance abuse requires patient authorization. (More general than previous barrier that applied only to patients in state-operated facilities.)	Continue work with behavioral health sub-group to fully explore this and other issues; generate issues and solutions. <b>May involve code of ethics for psychiatrists.</b>
Reporting requirements for rare genetic disorders, other disease registries and public health reporting requirements. Registries often cross state lines and may involve cooperative agreements.	Creation of sub-group involving Acting Commissioner, Bureau of Public Health, to clarify issues and explore solutions.
Use of PHI in monitoring public program performance.	Explore the development of protocols covering most common types of such use.  Explore impact of FOIA requests, since state government stores large amounts of data, including patient records. (Variability created by different judges using different balancing criteria to release.)  Explore impact of PHI leaving HIPAA compliant agencies of state government to other state and federal agencies or branches of government not HIPAA covered.
Variance in security-related business practices from one stakeholder to another.	None proposed at this time; will be education-based.

Key Barrier	Solution
<p><i>This potential barrier is unique to WV and not identified by the VWG.</i></p> <p>West Virginia has secured an amendment to its State Medicaid Plan that includes a member contract, requiring Medicaid clients to comply with a number of health-related items. Only through such compliance will clients be eligible for an expanded benefit that includes many of the “optional” benefits now available to all Medicaid beneficiaries.</p> <p><b>Operation of this amendment will require ongoing review of Medicaid members’ health records by their “medical home” provider. Oversight will require monitoring and access to these health records by people who are not the “medical home” provider.</b></p>	<p>Ensure that a beneficiary’s health information is protected pursuant to applicable privacy and security rules and regulations. Protocols shall be developed to establish the conditions under which a person’s protected information may be accessed for contract management, oversight and compliance monitoring.</p>

**2.2 Process used to Formulate Implementation Plans**

Early in the WV HISPC implementation, a decision was made to combine the subject-matter expertise and resources of the SWG and IPWG. This approach would, in our opinion, enhance the quality, substance, thoroughness and validity of the various implementation activities proposed. The committee was fully committed to putting forth recommendations that it considered achievable and practical. In doing so, we understood that an extended time frame would likely be necessary in order for certain solutions to be achieved. However, we deemed this incremental approach a preferred process for achieving the longer-term objectives established for the project. The process allows for and encourages a measured, interactive and collaborative problem-solving approach ensuring that all major stakeholders have the opportunity to comment on solutions that impact their particular interests. We expect this process to identify issues sooner than later, and the solutions that will flow from this process will be better configured.

In summary, the process used to formulate the implementation plans included the following elements:

- Trust, collaboration and consensus building were deemed critical success factors.
- Rely on the subject-matter expertise of individuals representing critical stakeholder groups and organizations.
- Promote the exchange and debate of various perspectives/points of view.

- Work towards a consensus of opinions.
- If in doubt, seek an expert opinion. Do not act without credible advice.
- When possible, utilize existing process/mechanisms to effect change and implement recommendations, so as to build on existing infrastructure.
- Be patient, but persistent. As more of the “public” is engaged, expect additional comments, questions and recommendations. This is a dynamic process.

### ***2.3 Solutions Already Implemented***

The IPWG is pleased to report that two priority pieces of legislation, SB 69 (Authorizing Electronically Transmitted Prescription Orders) and HB 3184, a bill to amend an existing State Statute relating to confidentiality, disclosure and authorization for disclosure of mental health information obtained in the course of treatment or evaluation of individuals were passed in this session of the West Virginia State Legislature. Both bills are awaiting the Governor’s signature. Governor Joe Manchin described electronic prescribing as one of his key health care initiatives for the current legislative session and was a strong proponent of the amendment that was passed to the West Virginia Mental Health Statute. We consider this accomplishment particularly significant. It reflects the hard work of many HISPC members and the broad support this project has had through out the state.

Other solutions, including convening special-topic work groups to address specific public health related issues, and issues related to the exchange of health information between an employer and employee, are currently underway. These work groups have been briefed and provided background information from the VWG and/or SWG regarding specific operational barriers identified and solutions proposed to address each. Work groups are currently meeting to further analyze the issue/problem and develop a more targeted set of solutions and implementation activities. The pace at which these groups will conduct their work will vary. All are expected to report their respective findings and recommendations within the next four to six months. Status reports, findings and recommendations will be submitted by each group to the WV HIN Board’s ad hoc oversight committee.

## 3.0 Review of the State Implementation Planning Process

### 3.1 West Virginia State Implementation Plan Work Group (IPWG)—Charge and Stakeholder Representation

The Charter for the IPWG, complete with its starting members (others were added as the work groups did their work), is included as Appendix A and B. WVMI, with assistance from the Health Care Authority, recruited members from the following stakeholder groups:

- Chief Privacy Officers, West Virginia University Hospital System, Cabell Huntington Hospital, Grant Memorial Hospital and Shenandoah Valley Medical System
- West Virginia State Medicaid Agency (Commissioner)
- Attorney, West Virginia State Legislature
- Major health insurance company (Mountain State Blue Cross/Blue Shield)
- West Virginia Business Roundtable
- AARP
- Commissioner of Behavioral Health and Health Facilities (Committee Chair)
- League of Women Voters
- Public Employees Insurance Agency
- West Virginia Executive Branch Director of Information
- Senior Assistant Attorney General
- West Virginia Hospital Association
- West Virginia Medical Society
- West Virginia Primary Care Association
- Social Security Association
- West Virginians for Affordable Health Care

### 3.2 Process to Assess Feasibility of Implementation Plans

As described in West Virginia’s Solutions Report, a decision was made early in the planning process to combine the efforts of the SWG and IPWG. Our objective in combining the two groups and restructuring the work was to create a process that would allow for a more comprehensive review, analysis and consideration of the barriers identified by the VWG and what might represent the most practical solutions to those barriers. Members of the SWG and IPWG agreed that a more substantive, practical list of solutions and accompanying implementation activities could be crafted if solutions and implementation activities could be discussed and agreed upon concurrently.

This process proved particularly effective and has resulted in what we believe to be is a more complete list of potential solutions and actionable implementation strategies. The process also represented a more efficient use of our combined committee resources (people’s time) and provided each participant a more complete understanding of the interoperability barriers confronting West Virginia and how these barriers could best be addressed. This knowledge base will serve future project related activities well since many of our committee members will remain actively involved as West Virginia moves forward with its implementation plans.

The process adopted by the combined SWG and IPWG to formulate, develop and assess the feasibility of individual implementation plans included the following:

- An assessment and determination of the impact a specific barrier would have on West Virginia’s ability to further promote and influence the adoption of health information technology.
- An acknowledgement that any and all solutions address privacy, security and confidentiality requirements and expectations of the public related to the sharing of personal health information. The project’s success will be significantly influenced by the public’s knowledge of and confidence in the privacy policies and consumer protections that are reflected in the various solutions.
- An ability to identify and secure immediate “success” opportunities for the State. Early accomplishments will create and sustain momentum for future project-related work.

### ***3.3 The Organization and Prioritization of Proposed Implementation Plans***

The IPWG elected to cluster the proposed solutions into the following general categories:

- Solutions that would require some type of legislative or rule-making action.
- Solutions that could be implemented through a well developed, targeted and intensive educational process.
- Solutions that could best be achieved through the adoption and application of “best practices” or standardized protocols.
- Solutions which will require further analysis/consideration.

The table on the following page identifies the recommended approach that will be used to address each key barrier identified by the VWG and SWG.

**Table 3-1: Approach to Addressing Barriers**

Approach	Key Barrier
Legislative/Rule Making	<p>Limit imposed by WV law involving sharing of personal info. of patients in state-operated facilities; all sharing, even for treatment and payment, has to be authorized by patient.</p> <p>WV law forbids anything except “wet” signature; forbids use of third party between physician and pharmacy.</p> <p>Sharing of health information with employers. Variety of concerns, e.g., “minimum necessary,” need for authorization by patient/employee; if authorized, HIPAA puts no limit on what can be shared. This issue represents one of the most compelling for consumers and elicits strongest negative reactions.</p>
Targeted and Intensive Education	<p>Limit sharing information for <b>treatment</b> purposes to only “minimum necessary.”</p> <p>Limit sharing for treatment purposes for HIV patients to only patient-authorized exchange.</p> <p>Various practices related to sharing information with law enforcement (and corrections) staff in compliance with HIPAA and other laws.</p>
Establish Best Practice/ Protocols	Use of PHI in monitoring public program performance.

Approach	Key Barrier
Requires Further Study/Consideration	<p>Release of information for payment purposes in WV related to mental health and substance abuse requires patient authorization.                      (More general than previous barrier that applied only to patients in state-operated facilities.)</p> <p>Reporting requirements for rare genetic disorders, other disease registries and public health reporting requirements.                      Registries often cross state lines and may involve cooperative agreements.</p> <p>Variance in security-related business practices from one stakeholder to another.</p> <p><i>This potential barrier is unique to WV and not identified by the VWG.</i></p> <p>West Virginia has secured an amendment to its State Medicaid Plan that includes a member contract, requiring Medicaid clients to comply with a number of health-related items. Only through such compliance will clients be eligible for an expanded benefit that includes many of the “optional” benefits now available to all Medicaid beneficiaries.</p> <p><b>Operation of this amendment will require ongoing review of Medicaid members’ health records by their “medical home” provider. Oversight will require monitoring and access to these health records by people who are not the “medical home” provider.</b></p>

### 3.4 Implementation Planning Methods/Tools Used

The IPWG utilized the subject-matter expertise and experience of its committee members and community experts to assess how best to implement proposed solutions. West Virginia is fortunate to have retained the services of an exceptional group of individuals to lead the State’s HISPC project. Representatives from the fields of state government, business, health care, insurance, law and higher education, coupled with the input from organizations representing the interests of various citizen groups and interested individuals, set the tone early in the HISPC planning process for how issues should best be addressed and resolved in West Virginia. Utilizing the “community of shared interests” approach, leaders were called upon to offer their best advice and opinion as to how the State might most effectively implement measures that would promote the electronic exchange of health information.

We believe this collaborative, interactive and open process was sound, reliable and effective. We are confident that the implementation strategies proposed by the IPWG provide an excellent framework for action. We also acknowledge that as the implementation process evolves, better solutions and methods for overcoming barriers may and hopefully will be identified. That is part of our process.

A critical next step was to present the Work Group's proposed solutions and implementation plan recommendations to "key stakeholders" identified as organizational designees for fulfillment.

The Work Group felt that it was important to solicit direct agency feedback regarding the specific implementation recommendations it was assigned. The group did not think it would be productive to simply assign responsibilities without confirming directly with an agency its opinion and reaction to implementation activities it was assigned. In order to secure this feedback in a formal and documented manner, an "Agency Questionnaire" (see Attachment C) was developed.

This questionnaire was sent to agency representatives for completion. Agency responses are summarized and incorporated in Section 4, State level Implementation Plans, of this report.

## 4.0 State-level Implementation Plans

The following outlines the specific implementation activities recommended by the IPWG to accomplish solutions proposed by the SWG. Where possible, the IPWG has attempted to identify the responsible party/person(s), organization or agencies, staffing and other resources necessary for implementation, including proposed timelines for accomplishment.

**Table 4-1: Recommended Implementation Activities**

Key Barrier	Solution	Implementation Recommendation	Resource Requirement	Timeline
Limit sharing information for treatment purposes to only “minimum necessary.”	<p>Targeted educational programs and training for health care professionals in all provider types.</p> <p>Targeted educational programs and training for key support staff, e.g., office managers, medical records.</p> <p>Negotiate with HIT vendors with largest “footprint” in WV to include appropriate HIPAA procedures related to sharing for treatment as part of implementation training of their customers.</p>	<p>1) Request that WVHIN authority serve as a depository for technical information and guidance on applicable federal/state laws, regulations addressing electronic health information exchange.</p> <p>2) Utilize professional associations as a means of consistent information dissemination.</p> <p>3) Consider utilizing the HIPAA Pre-emption work group as a WVHIN delegate to carry out this task.</p>	<p><b>Responsibility:</b> WVHIN, Ad Hoc Committee</p> <p><b>Approach:</b> The Committee will seek ongoing counsel from the WV HISPC Legal Working Group. Advice/input will also be requested of the WV Hospital Association, WV State Medical Association, WV Chapter of AHIMA and other professional associations.</p> <p><b>Cost/Expense:</b> less than \$1,000 to implement this solution (est.)</p>	<p>Begin 6/07 End 10/07</p>

Key Barrier	Solution	Implementation Recommendation	Resource Requirement	Timeline
Limit imposed by WV law involving sharing of personal info. of patients in state-operated facilities; all sharing, even for treatment and payment, has to be authorized by patient.	Explore change in WV law; determine reasons for existing restrictions.  Continue work with behavioral health sub-group to fully explore this and other issues; generate issues and solutions.	1) Secure DHHR’s position on amendment. If acceptable, DHHR to take lead in drafting necessary amendment. 2) Query the Health and Human Resource Committees of the State legislature regarding the legislative intent behind WV Code 27-5-9(e). 3) Confer with WV MH Association and related consumer organizations to ascertain their position on change. 4) Confer with WV Association of Behavioral Health Providers to get their assessment of need for change.	<b>Responsibility:</b> WV Bureau for Health and Health Facilities/DHHR Legislative Affairs  <b>Approach:</b> The WV BHHF will develop DRAFT legislation reflecting the consensus opinion of key stakeholder groups/organizations.  <b>Cost/Expense:</b> \$0	Task Completed. HB 3184 passed both Houses of the State Legislature on March 10, 2007. Bill awaiting Governor’s signature.
Limit sharing for treatment purposes for HIV patients to only patient-authorized exchange.	Review all state restrictions with Bureau of Public Health; convene consumer/advocacy group to discuss issues.  Based on above, develop and deliver targeted education/training to health care professionals and institutional provider staff. Note: this barrier is a result of business	1) Secure DHHR/Public Health Dept.’s position on limiting information exchange and establish basis for that position. This will establish what type of remedy, if any, may be necessary. 2) Establish a panel of public/consumer “subject-matter experts” and solicit their opinion and recommendations regarding the sharing of information. 3). Research and confirm reporting requirements/conditions as set forth	<b>Responsibility:</b> Primary process owner to be established. Given the nature of this issue, it is apparent that a multi-faceted educational strategy will need be devised. This strategy will require the input, collaboration and endorsement of multiple state level organizations/associations.	Begin 2/07 End 9/07

Key Barrier	Solution	Implementation Recommendation	Resource Requirement	Timeline
	practices and not law.	by agency specific rules, regulations and statute. Consider both state and federal requirements.	<p>.</p> <p><b>Approach:</b>            1) Convene a group a statewide agencies, organizations and provider associations. This group will be tasked with the responsibility of developing and disseminating a standard set of guidelines, instructions and clarifications regarding the sharing of patient information. This message will include what is/is not permissible and the basis for the instruction.            2) A consensus message will be crafted and communicated to a broad WV provider community. Accuracy and consistency in the materials prepared and disseminated will be critical</p> <p><b>Cost/Expense:</b> No specific budget estimate</p>	

Key Barrier	Solution	Implementation Recommendation	Resource Requirement	Timeline
			developed. Printing and mailing expenses will be incurred. Estimated expense \$5,000-\$7,500. Some agency/organization funds may be available to support this effort.	
Various practices related to sharing information with law enforcement (and corrections) staff in compliance with HIPAA and other laws.	Targeted training/educational program for law enforcement and public officials (including judges) to clarify HIPAA requirements.  Development of consistent protocols for local, county, and state law enforcement staff for the acquisition, maintenance, security, and exchange of individual health information.	1) Develop a model protocol for use by all law enforcement agencies and train applicable staff as necessary; request that WVHIN Board approve this protocol. 2) Confer with applicable State Agencies, State Police, AG’s Office and others on the design of the model protocol.	<p><b>Responsibility:</b> It has been suggested that the WV Division of Military and Public Affairs (MAPS) should be assigned oversight responsibility for the implementation of this task. Awaiting confirmation from MAPS of this assignment.</p> <p><b>Approach:</b> MAPS will take leadership of the implementation plan. They may begin by pulling together all of the stakeholders involved in this issue to develop model protocols. Stakeholders may include: state police, regional jails, Department of Corrections’ facilities,</p>	Begin 2/07 End 6/08

Key Barrier	Solution	Implementation Recommendation	Resource Requirement	Timeline
			<p>health care providers, court system and professional associations. State police involvement will be critical as they train law enforcement at all levels in West Virginia. Subject-matter expertise may be needed around HIPAA and law enforcement, in terms of protocol development and in the training component.</p> <p><b>Cost/Expense:</b> Budget for this activity cannot be developed at this time. Expense estimates will be included in the project plan.</p>	
WV law forbids anything except “wet” signature; forbids use of third party between physician and pharmacy.	Work with Governor’s Office and WVHIN Board to draft and pass legislation.	<p>1) Endorse change in state statute; request WVHIN Board adopt resolution to endorse legislation.</p> <p>2) A coordinate industry-wide training program for pharmacists, physicians and other health care professionals.</p>	<p><b>Responsibility:</b> WV HIN Board/WV HSPC Steering Committee</p> <p><b>Approach:</b> .Legislation has been introduced and passed in State Legislature. Governor’s signature expected.</p> <p><b>Cost/Expense:</b> \$0.00</p>	Task Completed. SB 69 passed both Houses of the State Legislature on March 10, 2007. Bill awaiting Governor’s signature
Sharing of health	Explore need for	1) Solicit input from key public	<b>Responsibility:</b> Given the	T be established

Key Barrier	Solution	Implementation Recommendation	Resource Requirement	Timeline
<p>information with employers. Variety of concerns, e.g., “minimum necessary,” need for authorization by patient/employee; if authorized, HIPAA puts no limit on what can be shared. This issue represents one of the most compelling for consumers and elicits strongest negative reactions.</p>	<p>additional state law to clarify what can be requested and uses of such information; must take into account various legitimate reasons employer needs health care information to manage benefits and monitor use of benefits – FLMA, Workman’s Comp. Will involve intensive work with a number of stakeholders.</p>	<p>(PEIA) and private sector (State Chamber of Commerce) employer groups, insurance carriers (BrickStreet Insurance) and labor organizations (CWA) to address parameters around which an employer may request/share personal health information.                      2) Identify and categorize applicable federal (, i.e. HIPPA, ADA, OSHA) and state laws addressing employee health information privacy matters. Assess need for WV law to supplement federal requirements addressing protected health information requirements. .                      3) Develop a broad based information and education strategy addressing employee health information privacy matters. Target dissemination of information statewide to employers and employees.                      4) Solicit business through out the state to adopt, implement and monitor internal policies addressing privacy safeguards for employee identifiable health information</p>	<p>nature of this particular issue, a public/private approach to problem identification, definition and resolution will be required. Entity to oversee implementation is to be established.</p> <p><b>Approach:</b> Categorize applicable federal and state laws, regulations addressing employees right to privacy and protection against inappropriate access to health information. Develop a resource library that may be accessed by employers and employees detailing rights, responsibilities and protections afforded against the inappropriate access to/use of protected health information.</p> <p><b>Cost/Expense:</b> To be established</p>	
<p>Release of information for payment purposes in</p>	<p>Continue work with behavioral health sub-</p>	<p>1) Secure DHHR’s position on amendment. If acceptable, DHHR to</p>	<p><b>Responsibility:</b> WV Bureau for Health</p>	<p>Task Completed. HB 3184 passed</p>

Key Barrier	Solution	Implementation Recommendation	Resource Requirement	Timeline
<p>WV related to mental health and substance abuse requires patient authorization.                      (More general than previous barrier that applied only to patients in state-operated facilities.)</p>	<p>group to fully explore this and other issues; generate issues and solutions.  <b>May involve code of ethics for psychiatrists.</b></p>	<p>take lead in drafting necessary amendment.                      3) Confer with WV MH Association and related consumer organizations to ascertain their position on change.                      4) Confer with WV Association of Behavioral Health Providers to get their assessment of need for change.</p>	<p>and Health Facilities/DHHR Legislative Affairs   <b>Approach:</b> The WV BHHF will develop DRAFT legislation reflecting the consensus opinion of key stakeholder groups/organizations.   <b>Cost/Expense:</b> \$0</p>	<p>both Houses of the State Legislature on March 10, 2007. Bill awaiting Governor's signature.</p>
<p>Reporting requirements for rare genetic disorders, other disease registries and public health reporting requirements. Registries often cross state lines and may involve cooperative agreements.</p>	<p>Creation of sub-group involving Acting Commissioner, Bureau of Public Health, to clarify issues and explore solutions.</p>	<p>1) Secure DHHR/Public Health Dept.'s position on limiting information exchange and establish basis for that position. This will establish what type of remedy, if any, may be necessary.                      2) Establish a panel of public/consumer "subject-matter experts" and solicit their opinion and recommendations regarding the sharing of information.</p>	<p><b>Responsibility:</b> WV Bureau for Public Health   <b>Approach:</b> WV BPH supports the concept of an electronic system of health records (EHR). However, Public Health Reporting and Registries are predominately one-way reports outside of the chain of treatment and payment normally addressed by an EHR. Various laws, regulations, protect the confidentiality of those reports and registries and policies that</p>	<p>Begin 2/07                      End 7/07</p>

Key Barrier	Solution	Implementation Recommendation	Resource Requirement	Timeline
			<p>are unlikely to change.</p> <p>WV BPH could support the creation of an EHR by providing a breakdown of required reporting that could be used to build “flags” in an electronic system. The flags would identify reportable conditions as well as required reporting forms or formats and instructions for filing the reports.</p> <p>Many public health programs and registries will most likely not accept electronic reporting either because of limited resources or restrictions imposed by law, regulation or policy. If, in the future, any BPH Program does decide to accept electronic reporting, such reporting will have to be in a PHIN compliant format.</p> <p><b>Cost/Expense:</b></p>	

Key Barrier	Solution	Implementation Recommendation	Resource Requirement	Timeline
			Negligible	
Use of PHI in monitoring public program performance.	<p>Explore the development of protocols covering most common types of such use.</p> <p>Explore impact of FOIA requests, since state government stores large amounts of data, including patient records. (Variability created by different judges using different balancing criteria to release.)</p> <p>Explore impact of PHI leaving HIPAA compliant agencies of state government to other state and federal agencies or branches of government not HIPAA covered.</p>	Convene group of state agency representatives (Medicaid, Public Health, PEIA) to assess and identify issues, problems and associated resolutions.	<p><b>Responsibility:</b> WV Bureau for Medical Services</p> <p><b>Approach:</b> Awaiting report/recommendation(s) from WV BMS</p> <p><b>Cost/Expense:</b> To be established</p>	To be established
Variance in security-related business practices from one stakeholder to another.	None proposed at this time; will be education-based.	Matter requires further analysis before any final solution/implementation recommendation is formulated.	<b>Responsibility:</b> Given the nature of this particular issue, a public/private approach to problem identification, definition and resolution will be required. Entity to oversee implementation is	Begin 2/07 End 12/07

Key Barrier	Solution	Implementation Recommendation	Resource Requirement	Timeline
			to be established.  <b>Approach:</b> To be established  <b>Cost/Expense:</b> To be established	
<p><i>This potential barrier is unique to WV and not identified by the VWG.</i>                      West Virginia has secured an amendment to its State Medicaid Plan that includes a member contract, requiring Medicaid clients to comply with a number of health related items. Only through such compliance will clients be eligible for an expanded benefit that includes many of the “optional” benefits now available to all Medicaid beneficiaries.  <b>Operation of this amendment will require ongoing review of Medicaid members’ health records by their “medical home”</b></p>	<p>1) Ensure that a beneficiary’s health information is protected pursuant to applicable privacy and security rules and regulations. Protocols shall be developed to establish the conditions under which a person’s protected information may be accessed for contract management, oversight and compliance monitoring.                      2) The Bureau should solicit input for Medicaid beneficiaries and related groups and organizations representing the interests of Medicaid beneficiaries in developing applicable safety and security safeguards.</p>	<p>1) BMS to establish a process that will ensure that a beneficiary’s health information will be secured and that the Advanced Medical Home provider, as a condition of their participation in the Medicaid program, will comply with all applicable privacy and security rules and regulations.</p>	<p><b>Responsibility:</b> WV Bureau for Medical Services   <b>Approach:</b> Awaiting report/recommendation(s) from WV BMS   <b>Cost/Expense:</b> To be established</p>	<p>To be established.</p>

Key Barrier	Solution	Implementation Recommendation	Resource Requirement	Timeline
<b>provider. Oversight will require monitoring and access to these health records by people who are not the “medical home” provider.</b>				

## 5.0 Multi-state Implementation Plans

The key barriers addressed by the SWG focused entirely on West Virginia-related issues. Consequently, the proposals put forth by the IPWG do not require strategies or activities that are dependent on the collaboration and cooperation among and between multiple states.

As the West Virginia implementation process moves forward, it is certain that situations will evolve where a particular solution could best be addressed through some type of multi-state compact or adherence with nationally accepted standards or protocols.

In order to remain actively involved in this national discussion, West Virginia will be represented in the NGA sponsored *State Alliance for e-Health*. The Alliance will:

- Address barriers to Health Information Exchange (HIE) and adoption of health IT, while preserving privacy, security and consumer protection.
- Build consensus in seeking the harmonization of the variations in state policies, regulations and laws, where appropriate, and develop standards and/or guidance for modifying such policies, regulations, or laws.
- Allow for the appropriate input of experts and others working on health IT endeavors to inform state policymaking.

Ms. Sallie Hunt, Chief Privacy Officer, West Virginia Health Care Authority and a co-manager of the WV HISPC project, will serve on the Health Information Protection Taskforce of the State Alliance for e-health. In this capacity, Ms. Hunt will be involved with issues regarding the protection of consumer health information that ensures appropriate interoperable, electronic health information exchange within states and across states. Ms. Hunt's task force appointment and her participation in related Alliance activities will ensure that West Virginia issues will be represented and that our HISPC-related implementation activities are guided by the best and most current subject matter expertise available.

## Appendix A

# West Virginia Health Information Security and Privacy Collaborative State Implementation Plan Work Group (IPWG)

August 2006

### Mission

The State Implementation Plan Work Group (IPWG) will ultimately implement targeted solutions and be the “public face” of HISPC, presenting proposed implementation plans at public meetings throughout the state. The IPWG will be broadly representative; its participants must be “influentials” able to speak for their constituencies and institutions and be publicly perceived as such representatives.

Reflecting Task 2, as defined in the RFP, this IPWG will:

- Craft an interim implementation plan in collaboration with the Project Management Team and the Legal Working Group (LWG), using the solution set provided by the SWG.
- Once the Steering Committee has ratified these implementation plans, the IPWG will test the reality of the interim implementation plan by taking an active role in a series of public meetings—at least one that will be centrally located, large-scale, and open to all stakeholders and consumers; and a series of three regional meetings, geared to securing more focused input from HIT stakeholders, with some targeted consumer participation.
- Finally, the IPWG will test the implementation plan within their constituents and institutions, in an iterative process that will continue to hone and enhance proposed solutions previously recommended and the viability of the project’s long-term objectives.

Working in conjunction with the Project Management Team, and if necessary, the LWG, the IPWG will compile the results of these multiple input channels into a “final” interim report. The Management Team will present this report to the Steering Committee—the “Board of Directors”—for review and ratification and transmission to RTI as deliverable 4 of Task 2. This IPWG will also assist the Management Team to complete deliverable 6 of Task 3.

The IPWG will also commit to send selected members to the national meeting specified in Task 3 of the RFP. Because of the overlap between the IPWG and the Project Management Team, we will send a representative contingent with significant influence within state government and the HIT stakeholder community and with thorough knowledge of the deliverables of the WV HISPC. This group should both contribute to a national dialogue and be able to bring back additional ideas from this dialogue and act upon them—sustaining the work of HISPC beyond the term of this contract.

## Appendix B

### West Virginia Health Information Security and Privacy Collaborative State Implementation Plan Work Group (IPWG)

#### IPWG Membership:

John Bianconi, Chairman, Commissioner, WV Bureau for Behavioral Health and Health Facilities  
Nancy Tyler, Counsel to WV Legislature, House Finance Committee  
Charlene Vaughn, WV Attorney General's Office  
Brian Kastic, Governor's Office  
Joe Ward, Governor's PO/Deputy General Counsel  
Nancy Atkins, Commissioner, WV Bureau for Medical Services  
Paul Arbogast, WV Business Roundtable Representative  
Fred Earley, Mountain State BC/BS  
Melissa Martin, WVU Hospital PO  
Larry Ball, Cabell Huntington Hospital PO  
Jenny McKinney, Grant Memorial Hospital PO  
Randy Jacobs Shenandoah Valley Medical System PO  
Keith Huffman, WV Public Employees Insurance Agency  
Jim Kranz, WV Hospital Association  
Evan Jenkins, JD, WV State Medical Association  
Paul Oliverio, Social Security Administration  
Perry Bryant, West Virginians for Affordable Health  
Bonita Whitman  
Joan Armbruster, AARP  
Sylvia Watkins, AARP  
Kathleen Stoltz, WV League of Women Voters  
Social Security Administration  
Phil Schenk, WV Primary Care Association  
John Marks, WVMI (Project Management Staff)

## West Virginia Health Information Security and Privacy Collaborative

### Agency Questionnaire

#### Background

In May 2006, the West Virginia Medical Institute, in collaboration with the West Virginia Health Care Authority, began work on a Health Information Security and Privacy (HISPC) project. The goals of this project are the following:

- To assess variations in business practices related to the private and secure exchange of health information among various stakeholders.
- To analyze the legal basis for these practices.
- To propose solutions for barriers found that interfere with information exchange.
- To develop plans to implement the proposed solutions.

Over 60 individuals representing various stakeholder groups and organizations around the state have participated in this process. The project complements related efforts currently underway in West Virginia to promote and advance the development of health information technology, a key objective of Governor Joe Manchin and the West Virginia Health Information Network (WVHIN) Board.

To date, HISPC work groups have already undertaken the following tasks:

- Identified key barriers interfering with information exchange.
- Identified solutions to those barriers.
- Developed proposed implementation plans describing how those solutions could best be achieved.

We are currently at the point in our planning process where we need your input and advice on how critical elements of these implementation plans can best be executed.

#### Request

All states participating in the HISPC project have been requested to provide detailed implementation plans. Key elements of these plans include the following components:

- Identify the agency/organization that will oversee the implementation process.
- Implementation timeline and key milestones.
- Process for assessing, measuring and reporting progress.
- Projected cost and resource requirements.

Because of your leadership position and participation in the HISPC project, we are requesting your assistance in providing the best information you can related to the following implementation proposals.

On the following pages we have listed two barriers identified by the HISPC's Variations Work Group and the solutions and implementation plans proposed to address each issue. Please review the issue and respond as best you can to the questions included below.

Please insert your response in the "response" field following each question.

**Barrier # 1:**

Limit sharing protected health information (PHI) for **treatment** purposes to only “minimum necessary.”

**Solution:**

- Targeted educational programs and training for health care professionals in all provider types.
- Targeted educational programs and training for key support staff, e.g., office managers, medical records.
- Negotiate with HIT vendors with largest “footprint” in West Virginia to include appropriate HIPAA procedures related to sharing for treatment as part of implementation training of their customers.

**Recommended Implementation Plan:**

1. Request that WVHIN serve as a depository for technical information and guidance on applicable federal/state laws, regulations addressing electronic health information exchange.
2. Utilize professional associations as a means of consistent information dissemination.
3. Consider utilizing the HIPAA Pre-emption work group as a WVHIN delegate to carry out this task.

**Questions/ Responses to Barrier 1**

**Question 1:** Do you believe that your agency should be delegated oversight responsibility for ensuring that this plan element is implemented? If yes, what Division/Unit within the agency will be assigned this task? If no, can you recommend an alternative agency that might be delegated this responsibility?

Response 1:

**Question 2:** How do you envision your agency moving forward with this implementation plan? What assistance, guidance, or support will you require?

Response 2:

**Question 3:** What is your best estimate of the time it will take to implement this solution?

Response 3:

**Question 4:** Please provide your best estimate of what it would cost to implement this solution. What other resources requirements will your agency require?

Response 4:

**Question 5:** In your opinion, does this solution represent a reasonable and practical approach for addressing/resolving the barrier stated above?

Response 5:

**Question 6:** Other comments, observations, or recommendations?

Response 6:

**Barrier # 2:**

Various practices related to sharing information with law enforcement (and corrections) staff in compliance with HIPAA and other laws.

**Solution:**

- Targeted training/educational program for law enforcement and public officials (including judges) to clarify HIPAA requirements.
- Development of consistent protocols for local, county, and state law enforcement staff for the acquisition, maintenance, security, and exchange of individual health information.

**Recommended Implementation Plan:**

1. Develop a model protocol for use by all law enforcement agencies and train applicable staff as necessary; request that WVHIN Board approve this protocol and other policies and procedures.
2. Confer with applicable State Agencies, State Police, Attorney General's Office and others on the design of the model protocol.

**Questions/Response:**

**Question 1:** Do you believe that your agency should assume oversight responsibility for ensuring that this plan is implemented? If yes, what Division/Unit within the agency will be assigned this task? If no, can you recommend an alternative agency that might be delegated this responsibility?

Response 1:

**Question 2:** How do you envision your agency moving forward with this implementation plan? What assistance, guidance, or support will you require?

Response 2:

**Question 3:** What is your best estimate of the time it will take to implement this solution?

Response 3:

**Question 4:** Please provide your best estimate of what it would cost to implement this solution. What other resources requirements will your agency require?

Response 4:

**Question 5:** In your opinion, does this solution represent a reasonable and practical approach for addressing/resolving the barrier stated above?

Response 5:

**Question 6:** Other comments, observations, or recommendations?

Response 6:

Thank you for taking the time to complete this questionnaire.  
Please return the questionnaire by Thursday, February 8<sup>th</sup> to:

John Marks  
HISPC Implementation Plan Work Group  
[jmarks@wvmi.org](mailto:jmarks@wvmi.org)  
346-9864, ext. 2271