Assuring Privacy in Electronic Health Information Exchange

Health IT, Meaningful Use and Title X
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Health Information Technology for Economic and Clinical Health Act (HITECH)*

Nationwide health information infrastructure with the goals of

- Improving the quality of care
- Promoting preventive care
- Reducing costs
- Providing medical decision support
- Facilitating research
- Reducing disparities
- In a secure and protected manner

*American Recovery and Reinvestment Act (ARRA)

Use of EHRs & Health Information Exchange

HITECH

- Does not mandate use of electronic health records (EHRs) or electronic health information exchange (HIE)

- Does create financial incentives under Medicare and Medicaid for eligible providers (primarily physicians) and hospitals to "meaningfully use" EHRs, including exchanging health information electronically

Electronic Health Records

- Collect and collate clinical data (medical record)
- Decision support
- Scheduling
- Exchanging health information with other providers (HIE)
- Communications with patients
  - Notifying of test results

# ONC Programs to Encourage Adoption of EHRs and HIE

- Nationwide Health Information Network
  - Standards
  - Policies
  - Demonstration projects
- Regional Extension Centers
- Grants for HIT training
- Beacon grants for cutting edge communities
- State Health Information Exchange cooperative agreements

State Cooperative Agreements

- Intended to assist states in facilitating and accelerating HIE
- States adopting various approaches

Models for Storing Health Information

- Server on provider's location
- Health information service provider
  - Health information organizations (HIOs)
  - Central repository
  - Federated or distributed system
- "In the cloud" (remote commercial server)
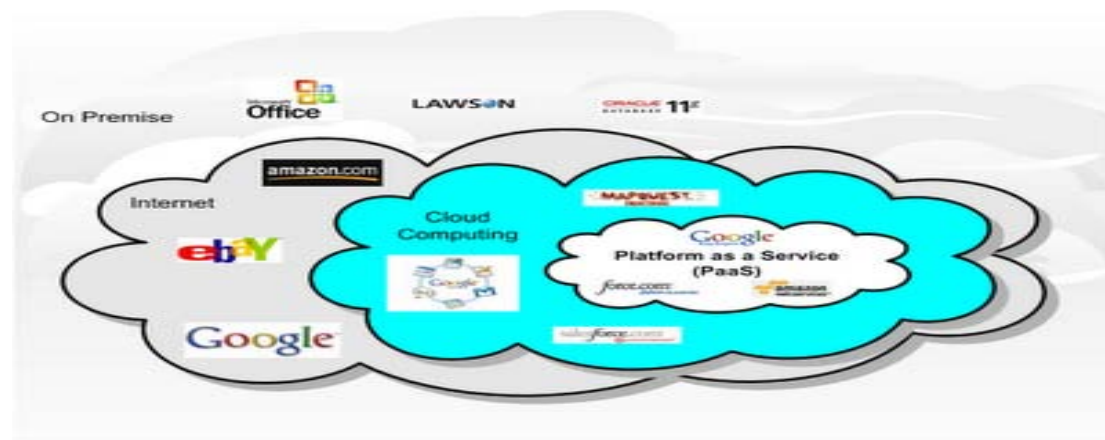
Models for Electronic Health Information Exchange

- Directed "push"
  - Transfer of information is initiated by provider holding information who sends to another provider

- Query-response
  - Initiated by a requesting party
  - Record locator service
  - Information sent in response to query

Privacy of Electronic Health Information

- HIPAA Privacy Rule
  - Applies to most health care providers, health plans and health care clearinghouses ("covered entities")
  - Applies directly to business associates including HIOs (HITECH)
  - Detailed provisions on the use and disclosure of protected health information
  - Treats all health information the same (except separately maintained psychotherapy notes)

HIPAA Privacy Rule

- Permits disclosure without patient permission for treatment, payment and health care operations
- "Minimum necessary" does not apply to requests for or disclosure of information for treatment purposes
- Permits disclosure for judicial or administrative proceedings (e.g., divorce actions)
- Permits disclosure to law enforcement pursuant to
    - Subpoena
    - Administrative request

HIPAA Privacy Rule

- Permits patients to restrict disclosure to health plans of information related to treatment paid out of pocket (HITECH)

- Expands accounting of disclosures to include those made for treatment, payment and health care operations

HIPAA Privacy Rule

- Does not supersede more stringent state and federal laws, many of which require patient consent to share information where HIPAA would not
  - Title X
  - 42 CFR part 2
  - State HIV-related laws
  - State mental health laws

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Title X

- Sec. 59.11 Confidentiality.

  All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and ***must not be disclosed without the individual's documented consent,*** except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals

- 42 CFR Sec. 59.11

Implementation Challenges

How should we address

- Consent management
- Data segmentation
  - Exchanging some, but not all, health information in a patient's HER
- Minors—potential for incorporating sensitive information into general clinical information of other providers?

Implementing Challenges

- Are there gaps?

- Is HIPAA enough?

ONC Activities

- HIT Policy Committee Privacy and Security "Tiger Team" Workgroup
- Identifying and sharing "best practices"
- Standards
- Investigating technology

Goal: Assure Privacy

- Meet patient expectations
- No surprises
- Technology should not drive privacy policy decisions

Get Involved

State HIE awardees

- ONC will provide a state list in December

The End