



Department of Health & Human Services
Office of the National Coordinator for
Health Information Technology

HEALTH INFORMATION SECURITY & PRIVACY
COLLABORATION

Health Information Security and Privacy (HISPC) National Conference

Creation of State Legislation to Protect and Facilitate Use and Exchange of Electronic Health Information in New Mexico

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Bethesda, MD

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Health Information Security & Privacy
COLLABORATION



OVERVIEW

- **Background—Health Information Exchange in New Mexico**
- **HISPC Project—Privacy Barriers**
- **Focus on Privacy Legislation**
- **Phases 1, 2, and 3 EMR Legislation and Outcomes**
- **Lessons Learned**
- **Conclusions**

Background

- **Creation of NMHIC**
 - The New Mexico Health Information Collaborative (NMHIC) was created in late 2004 with funding from AHRQ and community organizations
 - Objective: creation of a health information exchange network for the state to provide cross-organization data to providers at point of care and eventually to patients
 - Lead agency was Lovelace Clinic Foundation (LCF), non-profit applied health research institute
 - Governed by 35-member Steering Committee
 - Built basic technical infrastructure, community governance structure, and pilot exchange demonstrations
 - Selected as one of nine sites for NHIN trial implementations in 2007
- Privacy concerns from the outset—but HIPAA appeared to allow data sharing across organizations for purposes of treatment, payment, and operations without patient authorization.

Health Information Security and Privacy Collaborative (HISPC) Project

- **AHRQ provided funding through RTI**
- **Objectives: to identify and create solutions for key privacy and security barriers to electronic health information exchange posed by business practices and state laws**
- **NM selected health information privacy legislation as its implementation focus**

Why New Health Privacy Legislation?

- **Our research showed that New Mexico's health information protection laws had problems:**
 - fragmented and dated
 - addressed only paper-format records
 - enacted prior to the adoption of the HIPAA Regulations
 - In some cases more restrictive than HIPAA
 - put both EMR and health information exchange development at possible legal risk, as well as providers
 - did not consider potential positive impact of health information technology on patient care
- **Proposed solution: passage of comprehensive new health information legislation to address issues and supersede all previous laws**

What Are Other States Doing?

- **Attorneys reviewed 50 states for existing relevant legislation**
 - Most states have no legislative authorization of EHRs
 - Only two states have specifically addressed the operation of a health information exchange
 - Nevada—HIPAA + Opt-Out
 - Minnesota—higher level privacy protection

Goal of Proposed New Mexico Legislation

Draft legislation in New Mexico that authorizes the use of electronic medical records (EMRs) and facilitates the operation of the health information exchange (HIE) while protecting patient privacy

Legislative Development Phase 1

June 2007 to March 2008

- **Research health information laws in all 50 states**
- **Initial meetings with privacy experts**
- **Draft legislation**
- **Identify legislative sponsors**
- **Engage stakeholders in the review of legislation**
- **Redraft legislation**
- **Introduce legislation titled “Electronic Medical Records Act” during the 2008 Legislative Session – Jan. 2008**

Components of Phase 1 Legislation

- **Three components**
 - Legal authorization of EMRs
 - Develop plan to set dates to require electronic claims, EMRs, and HIE
 - Privacy requirements for EMRs and HIE
 - Used Minnesota law as point of departure (more privacy protected than HIPAA)
 - Demographic data used for patient matching by record locator service is included unless patient “opts out”
 - “Break the Glass” provisions for medical and public health emergencies

Legislative Outcome Phase 1

- **During the legislative session patient consent requirements were reduced to HIPAA levels in response to strong provider concerns**
- **Bill was supported in the House but failed to pass in the Senate**
 - **Resistance to an unfunded EMR mandate**
 - **Republicans opposed to Governor's health reform proposal - EMR bill a part of his reform**
 - **ACLU wanted stronger privacy protection, including penalties**

Legislative Development Phase 2 April 2008 to August 2008

- **Redrafted legislation**
 - **Excluded plan for EMR mandate**
 - **Maintained HIPAA level of protection**
- **Reintroduced EMR Act bill during special legislative session – August 2008**

Legislative Outcome Phase 2

- **Bill passed in the House**
- **Bill passed in the Senate with numerous amendments**
- **Return to the House for final approval**
 - **Joint conference committee**
- **Returned to Senate where it DIED due to major controversy over provider liability issues**

Legislative Development Phase 3

September 2008 to February 2009

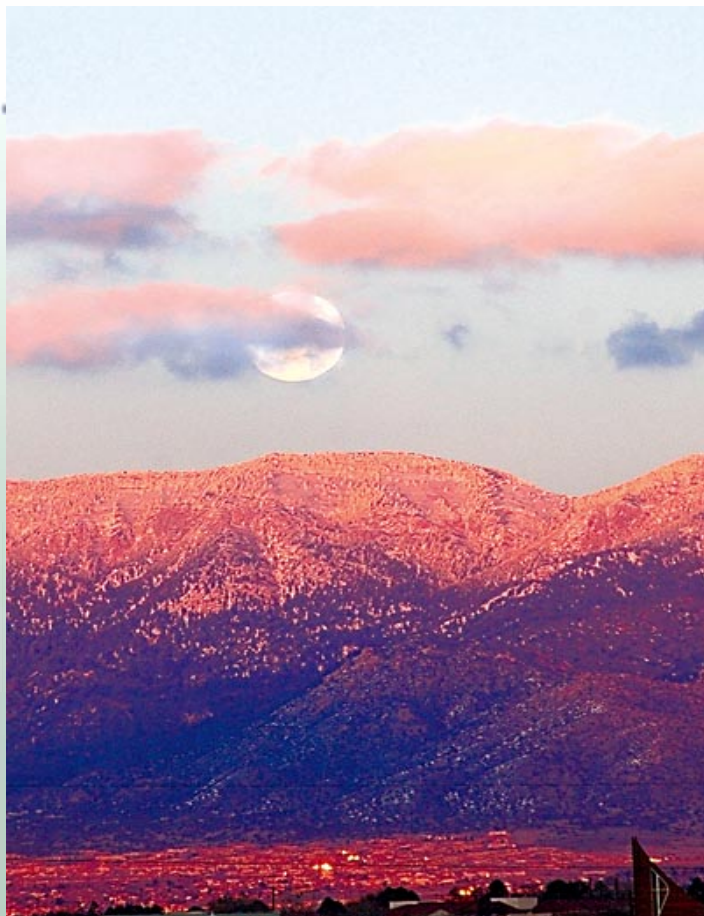
- **2nd Redraft of the EMR legislation**
 - Governor's office decides to reintroduce the bill
 - Retained same legislative sponsor
 - Requirements for consent reinstated
- **Passed initial committee**
 - Numerous questions about provider liability and use of record locator service
 - Amendment
 - Consent language changed back to HIPAA level
- **Next Step**
 - Judiciary Committee and more testimonies

Lessons Learned

- **Seeking consensus is an arduous process**
- **Legislative 101 not taught in grad school**
 - **Legislative process is a sausage making act**
- **Assure that stakeholders, key legislators, AND the Governor are on board**
- **Assure legislation addresses issues of consent, authentication, authorization, and accountability**
- **Difficult to achieve workable compromise between needs of privacy advocates and burdens/needs of health care providers**

Conclusions

- **Started the legislative process prior to the Harmonizing Collaborative and its development of the CAM and Assessment Tool**
- **The CAM and Assessment Tool would not have guaranteed passage of legislation, but would have streamlined the process, identified controversial areas, and highlighted educational opportunities through discussions with stakeholders and legislators**



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- **NMHIC Stakeholders**
- **Community Stakeholders in:**
 - **Farmington, Santa Fe, Clovis, and Las Cruces**
- **New Mexico State Legislators**
- **RTI and ONC**

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Albuquerque Balloon Fiesta

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