

# patientprivacyrights

## Comments Re:

## HITPC & HITSC Health Information Exchange Public Hearing

January 29, 2013

Patient Privacy Rights is a national not-for-profit organization advocating for the protection of patients and the primacy of the physician-patient relationship. Our work aims to present privacy-preserving solutions to core issues in health information exchange, interoperability, and practice innovation for health reform.

This testimony to the HITPC & HITSC Health Information Exchange Public Hearing requests HHS guidance on the implementation of Direct messaging in Stage 2 Meaningful Use to enhance the flow of health information while increasing privacy, patient engagement and the physician-patient relationship by simplifying both cross-institutional patient identification and patient authorization for health information exchange. Effective guidance around the implementation of Direct in Stage 2 Certified EHR Technology (CEHRT) will have an immediate effect in solving current problems faced by health information exchanges around patient identification, authorization management and record locator services. Effective guidance will leverage Direct secure messaging infrastructure in EHRs to reduce the privacy impact of health information sharing, engage patients and reduce physician frustration with mandated health IT.

Our approach is based on extending the physician's ability to prescribe drugs, labs and referrals to the prescription of health information access and exchange without undue interference from the EHR vendor or the institution that manages the CEHRT. In particular, we point to section 4.2.3 of the Applicability Statement for Secure Health Transport that reads:

“ STAs MAY store self-signed certificates in the collection of Trusted Anchors (but is NOT REQUIRED to do so, and may be prohibited by policy from doing so). “

PPR contends that by interpreting this clause as allowing patients to use their voluntary (we see voluntary as being equivalent to self-signed in this context) Direct email address as a cross-institutional patient ID. This form of institution neutral ID, is transparent and accessible to the patient in ways that probabilistic master patient indexes and involuntary patient identification methods are not. The use of voluntary patient identifiers (including Direct email address and others) will go a long way to reduce the coercive aspects of information aggregation as part of health information exchange and

# patientprivacyrights

the establishment of registries to support quality and value measurement.

PPR also contends that interpreting this clause to allow individual physicians and other licensed professional users of certified EHR technology to decide the source and destination of patient information (without technical interference from the EHR vendor or the EHR host institution) will promote practice innovation, patient engagement, information flow and patient privacy. This interpretation strengthens the physician-patient relationship, reduces EHR vendor lock-in and opens health IT to innovative services accessible conveniently at the discretion of individual professionals.

Facilitating health information exchange in a manner that is transparent and easily understood by patients and physicians will promote accountability, trust and practice innovation. Privacy and access to patient-centered services will both be accelerated if patients and their physicians can feel in control of their information flows. Direct secure email is inherently accessible to physicians and patients and HHS guidance to promote their voluntary use as the principal means to authorize exchange, facilitate record location services and monitor access is a short-term opportunity that should not be missed. Please ensure that the decision to use self-signed Direct certificates is in the hands of patients and their physicians.

Deborah C. Peel, MD  
Founder & Chair