The Organization and Financing of Regional Health Information Organizations ("RHIOs")

National Health Information Technology Audioconference

November 23, 2004

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Why Health Information Technology Matters: Some Views From the Top

- Institute of Medicine Report "Fostering Rapid Advances in Health Care: Learning from System Demonstrations" (2002)

  "In the 20th Century, bricks and mortar constituted the basic infrastructure of the healthcare delivery system. To deliver care in the 21st Century, the system must be based upon a health information and communications technology infrastructure that is accessible to all patients and providers."

- President Bush 2004 State of Union (January 20, 2004)

  "By computerizing health records, we can avoid dangerous medical mistakes, reduce costs and improve care."

Why Health Information Technology Matters: Some Views From the Top

- Appointment of Dr. David Brailer as the National Coordinator of Health Care Information Technology, in a sub-cabinet position (May, 2004)

  "The simple vision is that we want to see every American covered by one or more regional health information organizations." Dr. David Brailer (WSJ 9/22/04)

- Senator Clinton/Senator Frist Joint Washington Post Op-Ed Article: "How To Heal Health Care" (August, 2004)

  "Recently the Department of Health and Human Services announced a 10-year plan to build a new health information infrastructure. And while there is no consensus yet on all the changes needed, we both agree that in a new system, innovations stimulated by information technology will improve care, lower costs, improve quality and empower consumers."

Investment in Health Care Information Technology is Viewed as Key to Transforming U.S. From A Paper-Based to Electronic System

- HHS July, 2004 release of "The Decade of Health Information Technology: Framework for Strategic Action"; The Framework has four major goals:
  - to inform clinical practice through incentivizing investment in and adoption of EHRs;
  - to interconnect clinicians through the development of a national health information network, regional collaborations and coordinated federal health information systems;
  - to personalize care through encouraging the use of personal health records, enhancing informed consumer choice and promoting use of telehealth systems; and
  - to improve population health through unification of public health surveillance architectures, streamlining quality and health status monitoring among state and local entities and accelerating research and dissemination of evidence.

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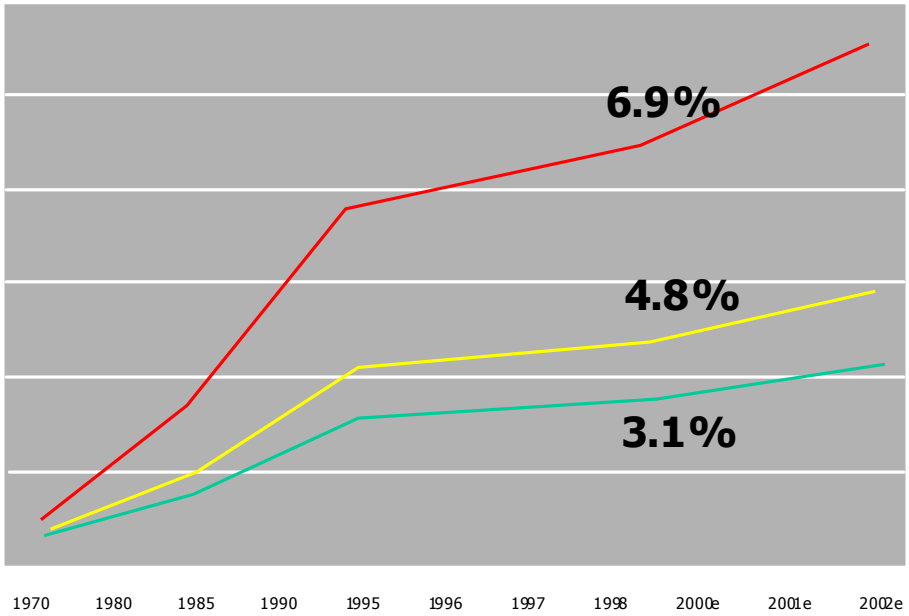
- The Framework sets forth three interrelated core strategies for pursuing these objectives:
  - **Promoting EHR adoption by clinicians.** This will be achieved through regional grants and contracts, increased availability of low-rate loans, "pay for use" of EHR programs, pay-for-performance programs and by reducing the risk of product implementation failure through development of minimal product standards for EHR functionality, interoperability, and security;
  - **Supporting the creation of Regional Healthcare Information Organizations ("RHIOs").** RHIOs are collaborative entities that facilitate the development, implementation, and application of secure health information exchange across care settings; and
  - **Facilitating interoperability on the national scale.** In November, federal officials released a Request for Information ("RFI") inviting responses seeking public comment and input regarding how widespread interoperability of health information technologies and health information exchange can be achieved.

Investment in Health Care Information Technology is Viewed as Key to Transforming U.S. From A Paper-Based to Electronic System

- What is driving the change in federal policy?
  - High Costs

Health Care Spending Per Capita



US	$5,473
5 Countries	$2,876
G-7	$2,191

Source: *Health, United States, 2002*
Five Countries: Luxembourg, Canada, Germany, Norway, Switzerland
G-7 Countries: Canada, France, Germany, Italy, Japan, United Kingdom

12

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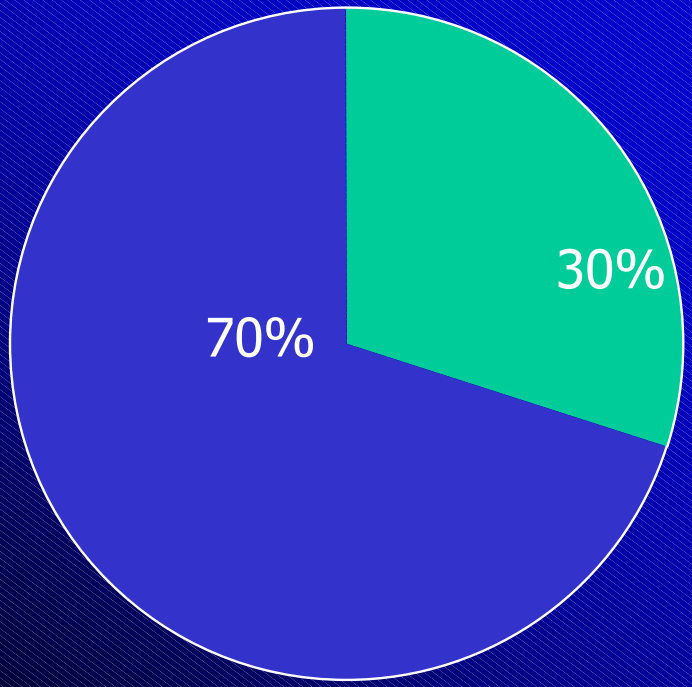
30% Unnecessary Cost

Practice Variation



Project Hope, Wennberg et.al., 2003

"...risk-adjusted cost varied almost 3-fold..."
Duke Clinical Research Institute 2002

"...cost of poor quality was...nearly 30% of the expense base...core medical processes that comprise the majority of what we do"
Mayo Clinic

"...72% drop in mean respiratory costs..."
APAM 2000

"...27% difference in cost of treating otitis media..."
Ozcan 1998

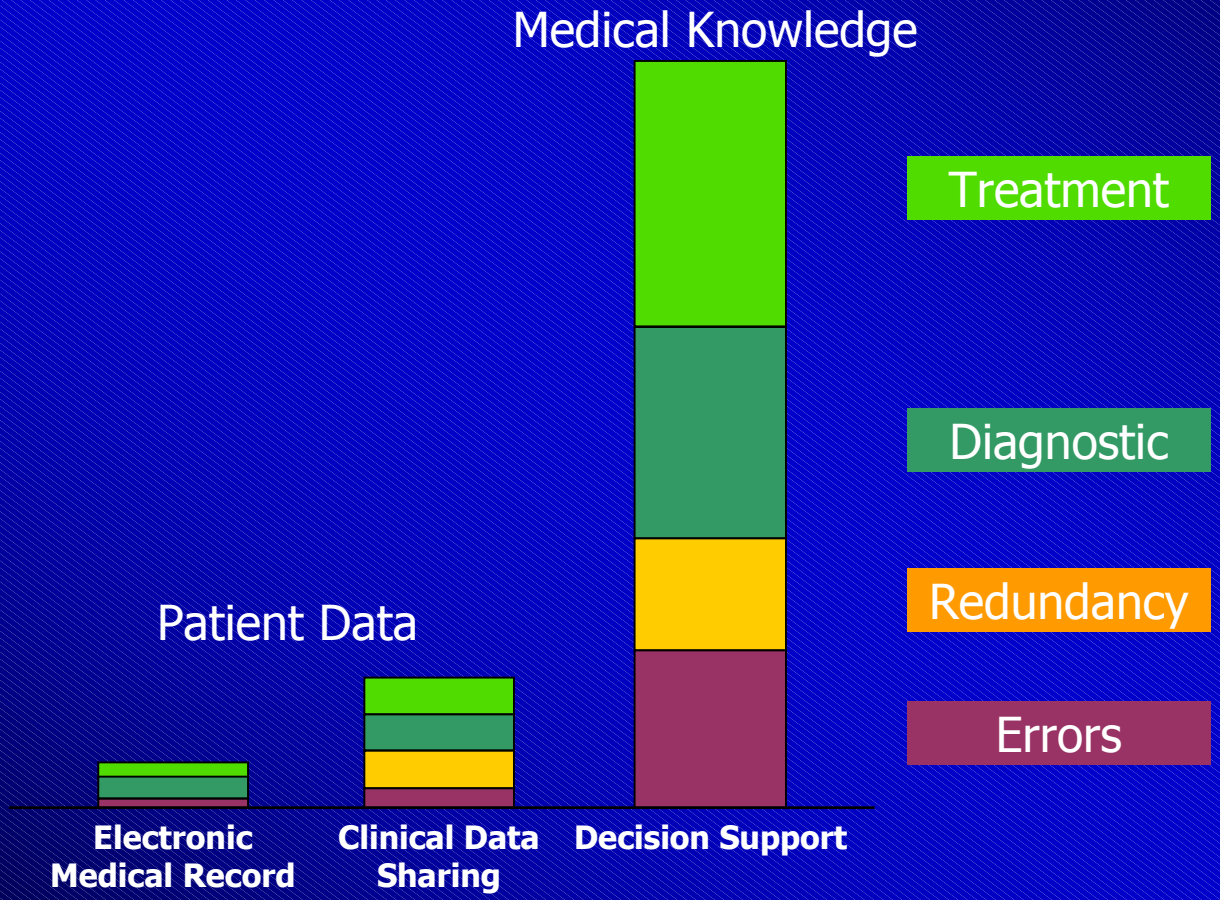
"...20 to 30% of the acute and chronic care that is provided today is not clinically necessary..."
Becher, Chause 2001

"...The cost of poor quality in health care is as much as 60% of costs..."
Brent James, M.D., Inc.

"...30% of direct health care outlays are the result of poor-quality care..."
MBGH, Juran, etal 2002

Investment in Health Care Information Technology is Viewed as Key to Transforming U.S. From A Paper-Based to Electronic System

- Value Creation



Source: SBCCDE, CITL, HealthAlliant

Regional Health Information Organizations

- HHS Framework for Strategic Action calls for the establishment of Regional Health Information Organizations ("RHIOs"). RHIOs are regional entities which support the development, implementation and application of secure health information exchange
  - Fueled by federal and private investment, RHIOs are in the early stages of development in communities throughout the U.S.
    - eHI Connecting Communities program received 140 applications
    - AHRQ $50M in funding support for community data exchange programs
    - AHRQ $25M in funding support for state and regional information exchange demonstration
  - Federal government likely to propose RHIOs administer financial incentives to support IT investment and use

Regional Health Information Organizations

- No Federal guidelines at this point, but likely that they will emerge in the next several months; field will evolve over time
- Key issues to be defined with respect to RHIOs:
  - Geographic coverage
  - Mission/Responsibilities
  - Requirements regarding numbers of stakeholders/definition of "community" project
  - Relationship to doctors offices
  - Relationship to National Health Information Network ("NHIN")
  - Tax status of an entity
  - Availability of Federal funding
  - Certification/Accreditation
  - Requirements in Federal Contracts
- Federal role likely to be permissive encouraging innovation in marketplace, while seeking to promote federal goal of interoperability through National Health Information Network

Key Legal Issues Involved in RHIO Formation

- Reviewing legal options necessitates a multi-faceted process involving an analysis of:
  - The key business decisions that first need to be made in order to define the organization's mission and scope
  - The range of options facing the organization relative to:
    - Governance Structure
    - Tax Status of Legal Entity
    - Terms and Conditions of Participant Agreements

Key Up-front Business Plan Issues

- What is the RHIO going to do (initially and in contemplated stages)?
- Will a participating party (or a subgroup of them) be creating/financing/developing a particular product for use as part of the project? If applicable, how will that party/subgroup be compensated for that effort? Are there things that participants will be precluded from doing during the time they are participating in the project?
- Who will the major stakeholders be for the various applications (i.e., who needs to be at the table and at what point)?
- Where will the financing come from?
- Will initial "angel" investors and/or grantors need a 501(c)(3) grantee?

Key Up-front Business Plan Issues

- Will there be disproportionately large capital contributions from some stakeholders (who will therefore want a greater say in governance)?
- Will some part of the project need to raise capital from outside sources (suggesting a need for at least part of the structure to be for-profit)?
- Where will the financial stream come from in the sustainable business model (and what does that say about stakeholders who will want to be involved in ongoing governance)?
- Will there be a third-party technology vendor – and what will/should its functions be?
- Will the project operate on a "public utility" model (with anyone who wants to participate invited to join with no large upfront capital outlay)? Or will it be restricted, at least initially, to some key set of players (with or without an upfront mandatory capital infusion)?

Governance Models - Options

- All Inclusive Membership -- Each participating provider and all other interested parties (regional health authorities, state and county health departments, third party payors [MCOs, self-funded employers, small business community], etc.) that want a seat at the table are invited to join in governance.
  - Membership in governance could be cut-off at some point (except by invitation, extended by those already involved) to provide an incentive to all to join early; or could be open-ended.
  - Membership could be limited to those who make an up-front financial (or "sweat equity") investment in the development of the project. The same level of "investment" at a later time (or a higher level of investment, to reflect the riskiness and desirability of early investment) could also assure a seat at the governance table.
  - Voting could be by majority rule, by the affirmative vote of a percentage greater than 50% ("super-majority" voting), or by "weighted" vote (giving different participants different numbers of votes).

Governance Models - Options

- Classes of Membership -- Categories of interested participants (e.g., institutional providers, physicians and medical groups, other clinicians, managed care companies and insurers, local employers, public health agencies, public representatives) could be divided into "classes" and represented on the governing body by one or more representative members.
  - The initial class representatives could be chosen by the members of that class or initially by a project steering committee.
  - A class could have more than one representative on the governing body, but the class could still be limited to a single or aggregate weighted vote.
  - Matters considered at the governing body level could require the affirmative vote of two or more classes of governing body members for adoption (e.g., physician providers and public representatives), etc.

Governance Models - Options

- Restrictive Membership
  - The governing body could consist of a limited number of members of diverse backgrounds chosen because of their leadership skills and standing in the community, their ability to articulate the views of various constituencies yet rise above those interests in determining the future of the project, etc.

Legal Entity Models - Options

- Virtual Model
  - No new legal entity is formed; rather, the project is operated under a contractual arrangement via (a) a “hub-and-spoke” format (see e.g., original Santa Barbara design), or (b) a single agreement among the participating parties (see e.g., original Indianapolis design).
- Non-Profit Corporation Model
  - A non-profit corporation is formed to be the development and/or operating company for the project. It could be organized to qualify as a 501(c)(3) tax-exempt organization; or it could be a taxable non-profit. It could have only a governing board, or it could have "members" (comparable to stockholders) who elect the governing board and/or have the right to vote on certain (but not all) matters affecting the corporation/project.

Legal Entity Models - Options

- For-Profit Corporation Model
  - A for-profit corporation is formed to be the development and/or operating company for the project. The corporation would have stockholders (who could consist of one or more classes - representing different levels of "investment", with different voting rights), who would in turn elect the members of the board of directors.
- Limited Liability Company Model
  - A limited liability company is formed to be the development and/or operating company for the project. The operating agreement for the company would provide who holds what economic interests in the entity and their respective rights, as well as the role of a governing body (if any) distinct from the equity owners.

Certain Key Terms of Participation Agreements

- Whose obligation is it to ensure individual patient consent to use of his/her data? To ensure compliance with individual patient instructions not to share his/her data? To ensure compliance with individual patient's desire to access his/her record? Or to make changes in that record? Or to provide inventory of who has accessed his/her record?
- Responsibility for errors: Arising out of data input? Arising out of data forwarded in response to a query? For inaccessible data (system being down)?
- Term of the agreement - duration; extension (process and duration); obligations during term and on expiration; penalties for early withdrawal, if any
- Limitations on uses of data obtained from the network
- Obligations relative to authorized and unauthorized users of the system

Certain Key Terms of Participation Agreements

- Confidentiality undertakings
- Training and support services promised
- Fee structure
- Rights (vested in whom?) to change specifications for hardware, software, data submission and storage
- Who has the ability to determine non-compliance by a participating provider, to call a default, and ultimately to suspend or terminate a provider's participation in the program?

Some Early Lessons from the Field Regarding Creation of RHIOs

- Importance of Leadership and Creating Shared Vision Among Key Stakeholders
- Organization of Project - Needs to be interdisciplinary and inclusive
  - Clinical
  - Legal/Organization
  - Financial
  - Technology
  - Communications
- First step is creating strategic business plan: this will drive all future steps
- Structure of organizational vehicle may minimize legal complexity - multi-stakeholder not-for-profit structure, with independent decision making body, will significantly reduce concerns regarding fraud and abuse and antitrust

Some Early Lessons from the Field of Creating RHIOs

- State law privacy issues may present larger hurdles to project than HIPAA
- Largest and most complex issues involve:
  - Defining role of RHIO as compared to and in relation to role of stakeholders contracting with the RHIO
  - Creating financing plan for the project; Think of financing as occurring in three stages:
    - Planning
    - Development
    - Operations
  - Note RHIO may enable financing of certain information technology investment by outside entities; this capital/operating cost will be borne by the outside entities, not the RHIO itself.