

THE HIT SYMPOSIUM
AT THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY

**Connecting for Health Common Framework:
the Model Contract for
Health Information Exchange**

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Background

- ◆ Connecting for Health
 - ❖ Collaboration of 100+ stakeholders
 - ❖ Founded and supported by Markle Foundation with additional support from Robert Wood Johnson Foundation
- ◆ Policy Subcommittee: 40 members representing law, health privacy and ethics, health care delivery, administration, technology, local network development
- ◆ Common Framework
 - ❖ Policy Guides
 - ❖ Technical Guides
 - ❖ Model Contract



Overview

- ◆ Model Contract for Health Information Exchange
 - ❖ Topic List
 - ❖ Model Contract Language
- ◆ Objectives
 - ❖ Assist SNOs to prepare participation agreements
 - ❖ Provide 60-40 solution
 - ❖ Identify issues and alternatives, raise questions
- ◆ Scope
 - ❖ SNO participation agreement
 - ❖ Data use agreement
 - ❖ Technology service/license agreement



Overview

- ◆ Structure and Context
 - ❖ **Common Framework** adopted by standards and policy entity (SPE)
 - ❖ **Terms and Conditions** adopted by each SNO, tailored to that SNO's needs
 - ❖ **Registration Agreements** between each SNO and its participants
- ◆ Definitions
 - ❖ Sub-network organization (SNO), includes RHIOs and others
 - ❖ Participant
 - Data Provider
 - Data Recipient
 - ❖ Authorized User (individual)



Essential Components

- ◆ Address the broad scope of agreements that may be required – may be implemented in separate documents
- ◆ Incorporate applicable terms of Common Framework Policies and Procedures
- ◆ Provide specific terms that the SNO determines are appropriate for its unique needs
- ◆ Include mechanism for making and implementing changes
 - ❖ Development and adoption of Common Framework
 - ❖ Changes in public perception and acceptance
 - ❖ Legal and other regulatory developments
 - ❖ Developing technology
 - ❖ Subsequent events
 - ❖ Operational requirements



Structural Considerations

- ◆ Manage resources in negotiating participation agreements
 - ❖ Multilateral nature of the agreement
 - ❖ Acknowledge advantages and disadvantages of traditional relationships and contracting strategies
 - ❖ Standard terms that apply to all parties
 - ❖ Flexibility to negotiate unique agreements with specific parties
- ◆ Simplify process for negotiating agreements with large numbers of Participants
- ◆ Simplify process for making changes
- ◆ Stress importance of role played by stakeholders' representatives (e.g., Management Committee) to assure document structure and process is and remains reasonable



Structural Devices

- ◆ Incorporation by reference
 - ❖ Participant's Registration Agreement incorporates SNO Terms and Conditions
 - ❖ SNO Terms and Conditions incorporates Common Framework Policies and Procedures
 - ❖ Structure seeks to limit number of subjects each Registration Agreement addresses in unique terms
- ◆ Application for registration
- ◆ Mechanism for making changes
 - ❖ Changes required by law may be implemented unilaterally upon notice
 - ❖ Changes affecting material rights or obligations may be implemented if Participant does not object and terminate Registration Agreement within specified period of time following notice



Common Framework

- ◆ Policies and procedures promoting health information exchange among SNOs
- ◆ Common Framework Policies and Procedures not yet adopted among SNOs, and should be expected to change over time
- ◆ Subjects
 - ❖ Permissible terms of user agreements
 - ❖ Categories of participants
 - ❖ Patient participation
 - ❖ Technical standards
 - ❖ Minimum privacy and security standards
 - ❖ Permitted and prohibited uses of health information
 - ❖ Minimum standards regarding liability and indemnification
 - ❖ Minimum standards, generally



Model SNO Terms and Conditions

- ◆ Addresses unique needs of each SNO
 - ❖ State and local laws
 - ❖ Specific services
 - ❖ Specific technology
 - ❖ Operational considerations
 - ❖ Community needs
 - ❖ SNO governance
- ◆ Model assumes SNO will
 - ❖ Operate record locator service-based peer to peer network
 - ❖ Provide (or provide access to) software necessary to use SNO's network



Terms and Conditions: Topic List

- ◆ Nature and scope of SNO's system (*i.e.*, technology) and services
- ◆ Selection of Participants
- ◆ Mechanism for amendments
- ◆ Responsibility for certification and supervision of individual Authorized Users; security measures
- ◆ Nature and scope of Participants' rights to use data obtained through the Network; permitted and prohibited uses
- ◆ Nature and scope of Participants' obligations to provide data
- ◆ Compliance with applicable agreements, *e.g.*, vendor agreements, software licenses, etc.
- ◆ Operational issues
 - ❖ Measures required to protect Network,
 - ❖ Responsibility for training and support, etc.
- ◆ Reporting obligations



Terms and Conditions: Topic List

- ◆ Services and/or technology provided by SNO, Participant, others
- ◆ Economics
 - ❖ SNO system and services
 - ❖ NHIN
 - ❖ Participants
- ◆ Preservation of intellectual property rights
- ◆ Liability, warranties and indemnification
- ◆ Parties' roles as business associates of other Participants
- ◆ Parties' rights regarding termination
- ◆ General provisions



Use of the Model

- ◆ Current initiatives, recent experience
- ◆ Issues that have received particular attention
 - ❖ Selection of Participants
 - Process
 - Standards
 - ❖ Economics
 - Model assumes Participants will pay service fees
 - Tying payment obligations to receipt of benefits
 - Arranging economics on another basis
 - ❖ Responsibilities for training and security
 - ❖ Liability, disclaimers of liability and indemnification
 - ❖ Patient opt-in vs opt-out



Common Framework Resources

- ◆ All materials are available without charge at www.connectingforhealth.org
- ◆ Discussion forum for registered users is available at www.healthit.ahrq.gov
- ◆ Software code available from regional sites: Regenstrief, MASHare, OpenHRE
- ◆ E-mail to info@markle.org
- ◆ E-mail to gerryhinkley@dwt.com

