Approved: March 29, 2011

MINUTES OF THE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairperson Landwehr at 1:30 p.m. on March 8, 2011 in Room 784 of the Docking State Office Building.

All members were present except:
Representative Bob Bethell – excused
Representative Terry Calloway - excused
Representative Bill Otto – excused
Representative Ann Mah - excused

Committee staff present:
Norm Furse, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Dorothy Noblit, Kansas Legislative Research Department
Jay Hall, Kansas Legislative Research Department
Debbie Bartuccio, Committee Assistant

Conferees appearing before the Committee:
Representative Lance Kinzer (Attachment 1)
Jerry Slaughter, Executive Director, Kansas Medical Society (Attachment 2)
Jeff Ellis, Chair of Legal Workshop Group of eHAC (Attachments 3 - 10)
Tom Bell, President, Kansas Hospital Association (Attachment 11)

Others attending:
See attached list.

HR 6011 – Supporting attorney general's legal challenge of Obamacare.

Chairperson Landwehr opened the hearing on **HR 6011.**

Representative Lance Kinzer presented testimony in support of the bill. (Attachment 1) The Patient Protection and Affordable Care Act, known as "ObamaCare" was passed by Congress without a single Republican vote and then signed into law by President Obama in March 2010. Laced with kickbacks, massive new taxes and entitlements, and a plethora of increased government bureaucracy, Obamacare is one of the most destructive pieces of legislation ever enacted by the United States Congress.

The fiscal implications of ObamaCare are alarming. Current estimates predict that it will cost the American taxpayers over $2.6 trillion by the time it is fully implemented. In the first 10 years alone, ObamaCare will add over $700 billion to our ballooning national debt and impose $500 billion in new taxes on the already overburdened American taxpayers.

The economic implications of ObamaCare are even more frightening. It will eliminate jobs, reduce hours and wages, and limit future job creation. A study by the National Federation of Independent Businesses, the nation's largest association of small business owners, found that ObamaCare's employer mandate could eliminate 1.6 million jobs by 2014 alone. As the unemployment rate rises, large and small businesses alike have already begun to feel the painful effects of this disaster.

The most egregious provision of ObamaCare is a federal mandate that requires all private individuals to buy federally approved health insurance or pay a hefty fine. For the first time in American history, the federal government is forcing all private citizens to become market participants. The individual mandate is the cornerstone of ObamaCare's job-killing government takeover of health care in America—and it *cannot* be allowed to stand.

The Framers of our Constitution created a system of dual sovereignty. James Madison explained in Federalist 45 that the powers delegated to the federal government are "few and defined" while the powers reserved for state governments are "numerous and indefinite." The Constitution's commerce clause

allows Congress to regulate economic *activity* between the states, but ObamaCare's individual mandate is an unprecedented attempt to regulate economic *inactivity.* Not only is the individual mandate terrible public policy with horrendous consequences, but if allowed to stand, it will also result in limitless regulatory power for the federal government.

Former Kansas Attorney General Steve Six ignored the clear voice of a large majority of Kansans by refusing to join other states in challenging the Constitutionality of ObamaCare. In November 2010, voters in Kansas and across the country held their elected officials accountable, and demanded that they fight to repeal ObamaCare. Immediately after taking office in January 2011, new Kansas Attorney General Derek Schmidt joined 25 other states in challenging ObamaCare's constitutionality.

On January 31st, 2011 Federal Judge Roger Vinson ruled in favor of Kansas and struck down ObamaCare as an unconstitutional exercise of federal power. Judge Vinson made it clear that "if Congress can penalize an individual for failing to engage in commerce, then the enumeration of powers in the Constitution would have been in vain, for it would have been difficult to perceive any limitation on federal power."

While Judge Vinson's ruling is not the end of the litigation over ObamaCare, it is a major victory for those who believe in the fundamental concepts of federalism, limited government, and individual liberty. Attorney General Schmidt should be commended for including Kansas in this momentous and crucial case.

There were no other proponents, opponents or neutral testimony presented. The Chair closed the hearing on **SB 6011**.

SB 133 – Health information; technology and exchange of health information.

Chairperson Landwehr opened the hearing on **SB 133.**

Jerry Slaughter, Executive Director, Kansas Medical Society, provided testimony in support of the bill. (Attachment 2) This legislation represents several years of work and study by a group of Kansas health care law experts about the legal barriers in state law to the successful implementation of health information exchange in our state. Over the years the intersection of differing state and federal standards on issues such as health care privacy, access, security, uses and disclosures, and the transmission of protected health information has created a confusing environment for both health care providers and patients alike. This legislation eliminates that confusion, and establishes the federal HIPPA Privacy Rule as the standard for our state going forward.

A cohesive, rational approach to governing the access to, and the use of, protected health information is also absolutely essential to the development of the system through which health care providers will begin to share clinical information in a secure electronic network. That electronic network, or health information exchange (HIE), is just beginning to emerge, and this legislation is critical to the successful development of these efforts statewide.

This bill is comprehensive in its scope, and will position our state to move forward in this important endeavor by "harmonizing", or making Kansas law more consistent with the HIPPA Privacy Rule, with one notable exception. The bill provides added protection beyond HIPPA regarding the use and disclosure of an individual's protected health information. It does this by requiring health care providers to furnish written notice to patients before transmitting or disclosing protected health information through an approved health information exchange. The bill specifies the content of such notices, including that

the individual (or his or her personal representative) has the right to request in writing that the health care provider not disclose any, or specified parts of, the individual's protected health information. In this way, the bill preserves the right of patients to "opt-out" of the disclosure requirements for any or all of their information, and it requires health care providers to honor such reasonable requests.

In addition to the "opt-out" provisions, the bill also establishes standards for approving health information organizations, and adopts uniform rules relating to designated personal representatives for health-related decisions. The legislation also protects health care providers from liability or adverse administrative actions based on the improper use or disclosure of protected health information so long as the provider complies with the use and disclosure standards that will be required of approved health information exchanges.

The bill is a critical component of our state's effort to establish a secure and highly functional health information exchange, which will benefit patients through less duplication of services, fewer adverse drug events and medical errors, improved quality and care coordination, faster access at the point of care to necessary patient clinical information, improved efficiency in care transitions, and reduced administrative burdens.

Jeff Ellis, Chair, Legal Work Group ("LGW"), eHealth Advisory Council ("eHAC"), presented testimony in support of the bill. The Legal Work Group was comprised of 28 lawyers from around the state who are primarily engaged in representing health care providers or who serve on the legal staff of the state agencies that regulate the health care industry in some respect. Amazing consensus was achieved within that group that has ultimately resulted in the proposal that comes before you as **SB 133**. (Attachment 3)

The consensus did not come easily. It was developed over several years of intense study beginning in 2006 when Kansas received grant funding during the Bush Administration to study the barriers to the electronic exchange of health information through the multi-state Health Information Security and Privacy Collaboration ("HISPC"). Over a two and one-half year study, the initial LWG identified more than 200 Kansas statutes and regulations which potentially impact health information exchange. Those laws, which appear throughout the State's statutory structure, had evolved over many years and were characterized by their inconsistency and lack of coordination. When providers sought to comply with those laws, and to additionally meet federal privacy and security standards mandated by HIPAA, they were confounded and overwhelmed; a circumstance which caused on enormous barrier to the exchange of health information, thereby inhibiting attempts to improve the efficiency and quality of health care delivery. (It also created a log of work for health care lawyers.)

The results of the study commissioned by HISPC were reported to the Legislature two years ago, and the LWG proposed a legislative resolution to commit the State to an overhaul of the mosaic of Kansas laws to bring them into harmony. On March 19, 2009, the Kansas Senate approved **Senate Resolution 1851**, which articulates the following policy: "That the laws of this State should be reviewed, modified as necessary, and construed to protect the interests of individuals in the confidentiality, security, integrity and availability of their health information; to promote the use of modern technology in the collection, use, maintenance, and exchange of health information; to promote uniformity in policy; and to codify all standards in a cohesive and comprehensive statutory structure."

When the State received the opportunity for stimulus funding to actualize the implementation of electronic health information exchange, the eHAC reconvened the LWG, with membership expanded to include representatives from state agencies, to perform the task presented by the Senate Resolution and to comply with the requirements of the stimulus funding grant.

Specifically, the LWG was charged with developing "proposed statutory revisions to remove barriers to the creation of an HIE and promote its implementation statewide and in collaboration with neighboring states, including the following: propose legislation authorizing the development of a statewide HIE; propose legislation which would provide the legal framework to operationalize a statewide HIE; assure the privacy and security of personal health information; and provide legal protection for providers and patients who participate in HIE."

The bill is the response to that charge. Its substance has been vetted by lawyers dealing with health care law and regulations on behalf of their provider clients and their patients; by attorneys and staff of state agencies charged with regulating the Kansas health care environment; and by representatives of the full range of health care providers who participate in the Kansas health care system.

The bill evolved from a conclusion by the LWG that HIPAA is an adequate, appropriate, and consistent standard to achieve privacy and security of personal health information. It adopts HIPAA as the standard for assuring the privacy of health information and harmonizes state law with HIPAA. It clarifies our State's confusing array of laws regarding who may make health care decisions for those who cannot make such decisions for themselves. It assure providers they will not be held liable under Kansas law if they share health information with other providers in compliance with the law. Lastly, it assures patients that their personal health information will not be shared if they so direct, and that, if shared, the confidentiality of that information will be maintained.

In addition to his testimony, Mr. Ellis provided the following documents for the committee to review:

- A memorandum entitled "Procedural History" and a detailed explanation of the Kansas Health Information Technology and Exchange Act ("K-HITE") (Attachment 4)
- Exhibit A (a copy of **SR 1851**) (Attachment 5)
- Exhibit B (e-HAC Legal Work Group members) (Attachment 6)
- Exhibit C (eHealth Advisory Council 2009-2010 Legal and Policy Workgroup Charter) (Attachment 7)
- Exhibit D (slide show presentation on K-HITE) (Attachment 8)
- Exhibit E (**06.30.2010-Executive Order 10-06 Kansas Health Information Exchange, Inc.**) (Attachment 9)
- Exhibit F (flow chart on K-HITE) (Attachment 10)

Tom Bell, President, Kansas Hospital Association, presented testimony in support of the bill. (Attachment 11) The Kansas Hospital Association's 127 community hospital members believe that this legislation will provide much needed recognition of new electronic health records and exchange technology, clarify rules around its secure use and articulate a patient's ability to access and control information.

Hospitals, physicians and other providers have always exchanged confidential patient information in the course of treating patients, conferring with experts and referring or transferring patients to appropriate levels of care. New technology will make this process seamless and more effective, but it brings with it new concerns about privacy and security.

The bill is critically important to the success of electronic health information exchange in Kansas. K-HITE articulates clearly that meeting federally mandated HIPAA privacy and security requirements and standards are the rules by which providers will exchange health information, providing much needed alignment of Kansas laws to the federal standard. This is the standard upon which new federal ARRA HITECH Act requirements are based and will be the national standard going forward. In an environment where electronic records are exchanged nationwide, even worldwide, we must all adhere to a common set of rules. K-HITE also lays out how patient information will be handled and how patients will be

informed.

This bill also provides guidance that has been lacking concerning individuals who require assistance in making decisions about their health information – minors, incapacitated adults and deceased individuals. Prior to this bill, no clear guidance has been available to providers about how this can be done even in the paper record environment. KHA applauds the authors in providing this clarification.

Finally, KHA supports K-HITE's language that sets the Kansas Health Information Exchange as the authority approving HIE's in Kansas. Without this approval process, providers have no method to assure that an HIE which seeks their participation or information meets the basic standards required by ARRA or has the appropriate security in place to protect their information.

Dr. Robert Moser, Secretary, Kansas Department of Health and Environment, provided written testimony only in support of the bill. (Attachment 12) Since 2004, a group of dedicated stakeholders have worked to develop a policy and technology infrastructure plan for the state that would facilitate the secure exchange of health information among providers and patients. In 2009, the Kansas Department of Health and Environment (KDHE), borrowing heavily from earlier efforts, convened a stakeholder group of 33 members called the e-Health Advisory Council (e-HAC). This council was tasked with assisting the state in the creation of the Kansas Health Information Exchange Strategic and Operational Plan (Plan) in response to a grant opportunity provided by the Office of the National Coordinator designed to accelerate health information exchange (HIE) development at the state level.

Two major themes in the Plan are privacy and security issues related to the exchange, and the removal of barriers to participation for both providers and patients. K-HITE provides a framework for addressing both of these issues by removing legal barriers to HIE and creating a practical framework for the secure exchange of health information. The substance of SB 133 has been debated and amended a number of times in the last few years by stakeholders in the Kansas HIE discussions. Through the work of the e-Health Advisory Council and its Legal Workgroup, we now have a bill that we believe removes a number of barriers to the meaningful adoption of HIE in the state, that was approved through a consensus process by the e-HAC, and has been forwarded to the Legislature with the support of both the Kansas Health Information Exchange Board of Directors and KDHE.

The e-HAC Legal Workgroup identified five areas that needed to be addressed in order for the KHITE Act to be successful in achieving the goals of stakeholders. The K-HITE Act harmonizes Kansas law with the HIPAA Privacy Rule and establishes standards for approving health information organizations (HIOs) in Kansas. Next, it gives patients the right to provide notice and affords them the opportunity to opt out of disclosures to an HIO if they so choose. K-+HITE creates uniformity in laws regarding the identification of personal representatives for health-related matters and amends the Uniform Electronic Transactions Act to include health-related transactions.

The secure exchange of health information is a necessity if we hope to achieve meaningful improvements in coordinated patient care, health care quality, patient safety, and enabled patient responsibility. Through the proper use of HIE we hope to see improvements in these areas resulting in healthier people living longer lives while being better informed than ever before about their personal health care.

Carolyn Gaughan, CAE, Executive Director, Kansas Academy of Family Physicians, provided written testimony only in support of the bill. (Attachment 13) She stated this is an important bill to align our Kansas laws related to health information with federal HIPPA Privacy and Security Rules. This is particularly important for physicians and other providers using Electronic Health Records (EHRs). The current laws are a significant barrier to the broad use of EHRs and the bill is needed to eliminate the

barriers. It supports the technological advancements that will enable secure and appropriate collection, use and exchange of health information. KAFP is supportive of health information exchange (HIE) efforts, particularly those that are targeted to improve quality of care and increase patient safety. HIE can lead to improved patient outcomes.

Gary Robbins, Executive Director, Kansas Optometric Association, presented written testimony only in support of the bill. (Attachment 14) The bill will allow interoperable secure exchange of health information to improve the coordination and quality of health care. By allowing health providers to exchange information electronically and have the latest information, it will potentially save lives through more timely treatment, preventing drug interactions, eliminating delays in test results, providing access to previous patient records and improving care in many other ways. In addition to enhancing the quality of care and patient safety, it has the potential to prevent unnecessary costs and achieve savings for the health care delivery system.

The bill is the cornerstone to allowing health information exchange by removing legal barriers to electronic health information exchange while assuring secure and safe exchange of health information. It requires amending Kansas law to be harmonized with the HIPAA Privacy Rules; establishment of standards for approving health information organizations; provisions for individual notice and the opportunity to opt out of disclosures to a health information organization; adoption of uniform rules regarding the identification of personal representatives for health information; and amending the Uniform Electronic Transactions Act to include health-related transactions.

The bill is essential to allow Kansas health providers the opportunity to meet "meaningful use" standards for health information technology thus qualifying for federal incentives for health information technology.

Maren Turner, AARP Kansas Senior State Director, presented written testimony only in support of the bill. (Attachment 15) AARP Kansas represents over 341,000 members from across the state. K-HITE is comprehensive in its scope – the legislation addresses identified legal barriers to health information exchange and creates a practical framework to facilitate the exchange of health information in a safe and secure manner. The K-HITE Act facilitates the rapid adoption of health information technology (HIT) and health information exchange (HIE) through a five-part strategy:

(1) harmonize Kansas law with the HIPAA Privacy Rule;
(2) establish standards for approved health information organizations (HIOs);
(3) provide individual notice and opportunity to opt out of disclosures to an HIO;
(4) adopt uniform rules regarding the identification of personal representatives for health-related matters; and
(5) amend the Uniform Electronic Transactions Act to include health-related transactions.

It is AARP Kansas' belief that the secure exchange of health information will improve health care quality and safety. Additionally, providers' ability to achieve "meaningful use" of health information technology and thus receive Medicare or Medicaid incentive payments depends in large part on their ability to demonstrate participation in health information exchange.

The bill is an imperative step in facilitating the adoption of health information technology and exchange and puts in place the structure for this exchange to occur in a safe, security manner.

Bob Williams, Executive Director, Kansas Association of Osteopathic Medicine, provided written testimony only in support of the bill. (Attachment 16) The Kansas Association of Osteopathic Medicine has been participating in a number of work groups over the past few years dealing with health information

The minutes of the Health and Human Services Committee at 1:30 p.m. on March 8, 2011, in Room 784 of the Docking State Office Building.

technology. The exchange of health information via electronic transmission will only increase over the next few years. The exchange of electronic health records and information is a positive step towards improved health care. However, it is not without its risks.

While this bill addresses legal barriers, more importantly it addresses the exchange of health information in a safe and secure manner. The bill will align Kansas law with the HIPAA Privacy Rule; establish standards for approved health information organizations; provide individual notice and opportunity to opt out of disclosures to Health Information Organizations; adopt uniform rules regarding the identification of personal representatives for health related matters; and amend the Uniform Electronic Transactions Act to include heath-related transactions.

The health care community is rapidly moving towards electronic health records. The ability of health care providers to demonstrate participation in health information exchanges is vital for Kansas health care providers to move forward and achieve "meaningful use" of health information technology. This bill is a necessary step to put in place the structure necessary for the exchange of electronic health information.

There was no testimony in opposition or neutral to the bill. The Chair provided committee members with the opportunity to ask questions and when all were answered, the Chair closed the hearing on **SB 133**.

The next meeting is scheduled for March 9, 2011.

The meeting was adjourned at 2:17 p.m.

HOUSE HEALTH & HUMAN SERVICES COMMITTEE

DATE: 3-8-11

NAME	REPRESENTING
George [illegible]	[illegible]
Michelle [illegible]	Cap Strategies
[illegible]	KHI
Dodie Wellshear	KAFP
Kathleen [illegible] Lippert	KSBHA.
[illegible]	KNASW
Kari Bruffett	KDHE
Melissa Hungerford	KHA
Rob Mealy	Kearney & Assoc.

Please use black ink

12549 S. BROUGHAM DR.
OLATHE, KS 66062
(913) 782-5885

STATE CAPITOL, ROOM 165-W
TOPEKA, KS 66612
(785) 296-7692
lance.kinzer@house.ks.gov

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

TOPEKA

LANCE KINZER
REPRESENTATIVE, 14TH DISTRICT

COMMITTEE ASSIGNMENTS
CHAIRMAN: JUDICIARY
VICE-CHAIRMAN: CORRECTIONS AND JUVENILE JUSTICE
MEMBER: JOINT COMMITTEE ON STATE-TRIBAL RELATIONS
RULES & JOURNAL

HR 6011: Supporting the Attorney General's Challenge of ObamaCare

Testimony of Rep. Lance Kinzer
March 8, 2011

Good Afternoon,

Mr. Chairman and Members of the Committee,

I appreciate the opportunity to advocate on behalf of HR 6011, supporting the Attorney General's legal challenge of ObamaCare in Federal Court.

The Patient Protection and Affordable Care Act, known as "ObamaCare" was passed by Congress without a single Republican vote and then signed into law by President Obama in March 2010. Laced with kickbacks, massive new taxes and entitlements, and a plethora of increased government bureaucracy, Obamacare is one of the most destructive pieces of legislation ever enacted by the United States Congress.

The fiscal implications of ObamaCare are alarming. Current estimates predict that it will cost the American taxpayers over $2.6 trillion by the time it is fully implemented. In the first 10 years alone, ObamaCare will add over $700 billion to our ballooning national debt and impose $500 billion in new taxes on the already overburdened American taxpayers.

The economic implications of ObamaCare are even more frightening. It will eliminate jobs, reduce hours and wages, and limit future job creation. A study by the National Federation of Independent Businesses, the nation's largest association of small business owners, found that ObamaCare's employer mandate could eliminate 1.6 million jobs by 2014 alone. As the unemployment rate rises, large and small businesses alike have already begun to feel the painful effects of this disaster.

The most egregious provision of ObamaCare is a federal mandate that requires all private individuals to buy federally approved health insurance or pay a hefty fine. For the first time in American history, the federal government is forcing all private citizens to become

Health & Human Services
Date: 3-8-11
Attachment: 1

market participants. The individual mandate is the cornerstone of ObamaCare's job-killing government takeover of health care in America—and it *cannot* be allowed to stand.

The Framers of our Constitution created a system of dual sovereignty. James Madison explained in Federalist 45 that the powers delegated to the federal government are "few and defined" while the powers reserved for state governments are "numerous and indefinite." The Constitution's commerce clause allows Congress to regulate economic *activity* between the states, but ObamaCare's individual mandate is an unprecedented attempt to regulate economic *inactivity*. Not only is the individual mandate terrible public policy with horrendous consequences, but if allowed to stand, it will also result in limitless regulatory power for the federal government.

Former Kansas Attorney General Steve Six ignored the clear voice of a large majority of Kansans by refusing to join other states in challenging the Constitutionality of ObamaCare. In November 2010, voters in Kansas and across the country held their elected officials accountable, and demanded that they fight to repeal ObamaCare. Immediately after taking office in January 2011, new Kansas Attorney General Derek Schmidt joined 25 other states in challenging ObamaCare's constitutionality.

On January 31st, 2011 Federal Judge Roger Vinson ruled in favor of Kansas and struck down ObamaCare as an unconstitutional exercise of federal power. Judge Vinson made it clear that "if Congress can penalize an individual for failing to engage in commerce, then the enumeration of powers in the Constitution would have been in vain, for it would have been difficult to perceive any limitation on federal power."

While Judge Vinson's ruling is not the end of the litigation over ObamaCare, it is a major victory for those who believe in the fundamental concepts of federalism, limited government, and individual liberty. Attorney General Schmidt should be commended for including Kansas in this momentous and crucial case.

Therefore, I respectfully ask that the Kansas House pass this resolution expressing its utmost support for Attorney General Schmidt's challenge of ObamaCare. Thank you.

KANSAS MEDICAL SOCIETY
Established 1859

To: House Health and Human Services Committee

From: Jerry Slaughter
Executive Director

Date : March 7, 2011

Subject: SB 133; the Kansas Health Information Technology and Exchange Act

The Kansas Medical Society appreciates the opportunity to express our support for SB 133, the Kansas Health Information Technology and Exchange Act ("K-HITE"). This legislation represents several years of work and study by a group of Kansas health care law experts about the legal barriers in state law to the successful implementation of health information exchange in our state. Over the years the intersection of differing state and federal standards on issues such as health care privacy, access, security, uses and disclosures, and the transmission of protected health information has created a confusing environment for both health care providers and patients alike. This legislation eliminates that confusion, and establishes the federal HIPAA Privacy Rule as the standard for our state going forward.

A cohesive, rational approach to governing the access to, and the use of, protected health information is also absolutely essential to the development of the system through which health care providers will begin to share clinical information in a secure electronic network. That electronic network, or health information exchange (HIE), is just beginning to emerge, and this legislation is critical to the successful development of these efforts statewide.

This bill is comprehensive in its scope, and will position our state to move forward in this important endeavor by "harmonizing", or making Kansas law more consistent with the HIPAA Privacy Rule, with one notable exception. SB 133 provides added protection beyond HIPAA regarding the use and disclosure of an individual's protected health information. It does this by requiring health care providers to furnish written notice to patients before transmitting or disclosing protected health information through an approved health information exchange. SB 133 specifies the content of such notices, including that the individual (or his or her personal representative) has the right to request in writing that the health care provider not disclose any, or specified parts of, the individual's protected health information. In this way, SB 133 preserves the right of patients to "opt-out" of the disclosure requirements for any or all of their information, and it requires health care providers to honor such reasonable requests.

In addition to the "opt-out" provisions, SB 133 also establishes standards for approving health information organizations, and adopts uniform rules relating to designated

623 SW 10th Avenue • Topeka, Kansa

Health & Human Services
Date: 3-8-11
Attachment: 2

personal representatives for health-related decisions. The legislation also protects health care providers from liability or adverse administrative actions based on the improper use or disclosure of protected health information so long as the provider complies with the use and disclosure standards that will be required of approved health information exchanges.

SB 133 is a critical component of our state's effort to establish a secure and highly functional health information exchange, which will benefit patients through less duplication of services, fewer adverse drug events and medical errors, improved quality and care coordination, faster access at the point of care to necessary patient clinical information, improved efficiency in care transitions, and reduced administrative burdens. We urge your favorable consideration of SB 133. Thank you.

KANSAS HOUSE OF REPRESENTATIVES
COMMITTEE ON HEALTH AND HUMAN SERVICES

TESTIMONY IN SUPPORT OF SB 133

THE KANSAS HEALTH INFORMATION TECHNOLOGY AND EXCHANGE ACT

By

Jeffrey O. Ellis, Chair, Legal Work Group
eHealth Advisory Council

March 8, 2011

Madam Chair and Members of the Committee:

I had the distinction of chairing the Legal Work Group ("LWG") of the eHealth Advisory Council ("eHAC") process convened by Governor Parkinson through the facilitation of KDHE. The Legal Work Group was comprised of 28 lawyers from around the state who are primarily engaged in representing health care providers or who serve on the legal staff of the state agencies that regulate the health care industry in some respect. Amazing consensus was achieved within that group that has ultimately resulted in the proposal which comes before you as SB 133.

That consensus did not come easily. It was developed over several years of intense study beginning in 2006 when Kansas received grant funding during the Bush Administration to study the barriers to the electronic exchange of health information through the multi-state Health Information Security and Privacy Collaboration ("HISPC"). Over a two and one-half-year study, the initial LWG identified more than 200 Kansas statutes and regulations which potentially impact health information exchange. Those laws, which appear throughout the State's statutory structure, had evolved over many years and were characterized by their inconsistency and lack of coordination. When providers sought to comply with those laws, and to additionally meet federal privacy and security standards mandated by HIPAA, they were confounded and overwhelmed; a circumstance which caused an enormous barrier to the exchange of health information, thereby inhibiting attempts to improve the efficiency and quality of health care delivery. (It also created a lot of work for health care lawyers.)

The results of the study commissioned by HISPC were reported to the Legislature two years ago, and the LWG proposed a legislative resolution to commit the State to an overhaul of the mosaic of Kansas laws to bring them into harmony. On March 19, 2009, the Kansas Senate approved Senate Resolution 1851, which articulates the following policy:

Health & Human Services
Date: 3-8-11
Attachment: 3

> That the laws of this State should be reviewed, modified as necessary, and construed to protect the interests of individuals in the confidentiality, security, integrity and availability of their health information; to promote the use of modern technology in the collection, use, maintenance, and exchange of health information; to promote uniformity in policy; and to codify all standards in a cohesive and comprehensive statutory structure.

When the State received the opportunity for stimulus funding to actualize the implementation of electronic health information exchange, the eHAC reconvened the LWG, with membership expanded to include representatives from state agencies, to perform the task presented by the Senate Resolution and to comply with the requirements of the stimulus funding grant.

Specifically, the LWG was charged with developing "proposed statutory revisions to remove barriers to the creation of an HIE and promote its implementation statewide and in collaboration with neighboring states, including the following: propose legislation authorizing the development of a statewide HIE; propose legislation which would provide the legal framework to operationalize a statewide HIE; assure the privacy and security of personal health information; and provide legal protection for providers and patients who participate in HIE."

SB 133 is the response to that charge. Its substance has been vetted by lawyers dealing with health care law and regulations on behalf of their provider clients and their patients; by attorneys and staff of state agencies charged with regulating the Kansas health care environment; and by representatives of the full range of health care providers who participate in the Kansas health care system.

SB 133 evolved from a conclusion by the LWG that HIPAA is an adequate, appropriate, and consistent standard to achieve privacy and security of personal health information. It adopts HIPAA as the standard for assuring the privacy of health information and harmonizes state law with HIPAA. It clarifies our State's confusing array of laws regarding who may make health care decisions for those who cannot make such decisions for themselves. It assures providers they will not be held liable under Kansas law if they share health information with other providers in compliance with the law. Lastly, it assures patients that their personal health information will not be shared if they so direct, and that, if shared, the confidentiality of that information will be maintained.

I will be happy to address any questions you may have.

Memorandum

TO: Kansas House Committee on Health and Human Services

FROM: Kansas Health Information Exchange, Inc.

RE: ***Detailed Explanation of Kansas Health Information Technology and Exchange Act ("K-HITE")***

DATE: March 8, 2011

PROCEDURAL HISTORY

Since 2006, several Kansas attorneys representing health care providers, insurers, consumer groups, and state agencies have been involved in the study of the legal barriers to full implementation of health information exchange. This work began with Kansas' participation in the multi-state Health Information Security and Privacy Collaboration ("HISPC"). Over a two and one-half-year period, the Legal Work Group ("LWG") produced a detailed analysis of the more than 200 Kansas statutes and regulations which may have an impact on health information exchange.

Through this process, a clear consensus emerged among LWG members: (1) Kansas health information laws are scattered across numerous statutory and regulatory provisions, are inconsistent with federal law, and do not contemplate electronic health records; (2) the lack of a cohesive legal structure poses a significant barrier to the broad use of technological advancements supporting the appropriate and secure collection, use, and exchange of health information; and (3) the best strategy for overcoming this barrier was a uniform and comprehensive statutory structure which harmonizes Kansas law with the federal HIPAA Privacy and Security Rules.

In response to these concerns, the HISPC LWG proposed a legislative resolution to commit the State to an overhaul of these laws. On March 19, 2009, the Kansas Senate approved unanimously Senate Resolution 1851, a copy of which is attached as **Exhibit A**. The resolution sets forth the following policy statement:

> That the laws of this State should be reviewed, modified as necessary, and construed to protect the interests of individuals in the confidentiality, security, integrity and availability of their health information; to promote the use of modern technology in the collection, use, maintenance, and exchange of health information; to promote uniformity in policy; and to codify all standards in a cohesive and comprehensive statutory structure.

With the formation of the eHealth Advisory Council to develop Kansas' strategic and operational plans for health information exchange, the HISPC LWG was reconvened and expanded to include additional stakeholder representatives. The current membership roster of the eHAC LWG is attached as **Exhibit B**.

Health & Human Services
Date: 3-8-11
Attachment: 4

The eHAC Steering Team charged the LWG with harmonizing Kansas law both internally and with federal law to remove barriers to the adoption of health information technology and to promote health information exchange within the state. Specifically, the LWG was tasked with developing "proposed statutory revisions to remove the barriers to the creation of an HIE and promote its implementation statewide and in collaboration with neighboring states, including the following: propose legislation authorizing the development of the statewide HIE; propose legislation which would provide the legal framework to operationalize a statewide HIE; assure the privacy and security of personal health information; and provide legal protection for providers and patients who participate in HIE." A copy of the LWG's charter is attached as **Exhibit C**.

Between August and December 2009, LWG members met on several occasions to craft such a legislative proposal. Initially, the members reached consensus on the subjects to be addressed in the legislation: (1) uniform definitions of relevant terms; (2) uniform rules regarding personal representatives for decisions regarding health-related matters; (3) harmonizing state health information privacy laws with the HIPAA Privacy Rule; (4) providing notice and an opportunity for an individual to "opt out" of inclusion of his or her protected health information in a health information exchange; and (5) defining the scope of state agencies' access to protected health information. Committees were formed to develop specific proposals to address each of these subjects.

The committees' work provided the content for the preliminary draft of the proposed legislation, which was then reviewed by all LWG members. A revised draft was prepared to address the concerns identified during those discussions. The LWG approved its final proposal in December 2009.

The draft K-HITE legislation was presented at the full e-HAC meeting on January 14, 2010. A copy of the presentation is attached as **Exhibit D**. Consensus approval was granted that date.

Due to concerns expressed by then-KDHE Secretary Bremby regarding the impact of the proposed legislation on state agencies, the proposal was not considered during the 2010 session of the Kansas Legislature. Over the summer, LWG representatives met with state agency representatives to address those concerns. At the agencies' requests, several minor changes were made to the draft legislation to resolve all outstanding issues. These changes also were circulated to all LWG members for their review.

KHIE's Board of Directors reviewed the draft legislation in December 2010. The Board directed revisions to afford immunity from liability for providers that followed the rules regarding disclosure of protected health information, as well as a handful of technical changes to resolve potential ambiguities. Again, these changes, along with a draft of this memorandum, were circulated to all LWG members for their review. The Board approved the draft legislation at its January 2011 meeting.

DETAILED EXPLANATION OF K-HITE PROVISIONS

K-HITE is comprehensive in its scope: the legislation addresses all legal barriers to HIE identified by the LWG. Providers' ability to achieve "meaningful use" of health information technology and thus receive Medicare or Medicaid incentive payments depends in part on their ability to demonstrate participation in health information exchange. Given the limited window of opportunity to receive these payments, a piecemeal strategy to address legal barriers to HIE is not an option.

Specifically, K-HITE employs a five-part strategy to facilitate the rapid adoption of HIT and HIE: (1) harmonize Kansas law with the HIPAA Privacy Rule; (2) adopt uniform rules regarding identification of personal representatives for health-related matters; (3) establish standards for approved HIOs; (4) provide individual notice and opportunity to opt out of disclosures to an HIO; and (5) amend the Uniform Electronic Transactions Act to include health-related transactions.

I. Harmonize Kansas Law with the HIPAA Privacy Rule

Among other things, the federal HIPAA Privacy Rule (referred to herein as "HIPAA"): (1) establishes a procedure by which an individual may obtain access to his or her protected health information ("PHI") maintained in a designated record set by a health care provider or health plan ("covered entities"); (2) requires covered entities to adopt appropriate administrative, technical, and physical safeguards to prevent inadvertent disclosures of PHI; (3) permits a covered entity to use and disclose an individual's PHI for purposes of treatment, payment, and health care operations (as well as other specific purposes identified in the regulation) without the patient's written authorization, regardless of the type of information involved; and (4) establishes specific requirements for a valid written authorization for use and disclosure of PHI.

On each of these four points – access, safeguards, uses and disclosures, and authorizations – Kansas law is inconsistent with HIPAA. Before HIPAA, patient privacy protections were piecemeal. State licensing statutes and regulations required providers to maintain patient confidentiality, but provided few specific parameters. The courts recognized a provider's duty to maintain confidentiality, but case law was not sufficiently developed to provide a predictable set of rules for providers. The Kansas Legislature passed statutes and state agencies promulgated regulations which established specific rules for use and disclosure of particular types of "sensitive" information, such as diagnosis and treatment of mental health conditions and certain contagious diseases. As a result, an inconsistent, uncoordinated system of laws and regulations developed over time.

This patchwork quilt of state health information laws which was put in place before HIPAA was not undone by HIPAA. Instead, to the extent state law is "more stringent" than HIPAA (*i.e.*, imposes additional restrictions on use or disclosure of PHI or affords individuals greater rights with respect to their PHI), those rules remain in effect, layered on top of HIPAA requirements.

For a provider, these layered rules create an administrative nightmare which often hinders the disclosure of PHI for appropriate purposes. Not surprisingly, many providers are reluctant to embrace HIE absent adequate assurances that they will not be exposed to liability under these state laws.

Under K-HITE, Kansas law regarding access, safeguards, uses and disclosures, and authorizations would be harmonized with HIPAA, allowing providers to operate under the predictability of one set of well-defined rules. In effect, Kansas would preempt its own pre-HIPAA laws in favor of the national standard developed since HIPAA became effective in 2004. So long as a provider complies with HIPAA, the provider would be immune from any civil or criminal liability or adverse administrative action based on use or disclosure of PHI.[1]

LWG members gave careful consideration to the impact of "preempting" Kansas law on patients. Based on their collective experience, the members agreed HIPAA strikes a proper balance between protecting patient privacy and the need for providers to share critical information. While privacy advocates have been critical of the federal government's lack of enforcement activity relating to HIPAA violations, few have criticized the regulation itself as not affording adequate patient protections.

Access. Prior to HIPAA's effective date, the Kansas Legislature approved what is now K.S.A. 65-4970 *et seq.*, establishing a procedure by which an individual can obtain copies of his or her medical records from a provider. Unfortunately, the Kansas law imposes different requirements than the similar provision in HIPAA, creating significant confusion for providers. K-HITE proposes to repeal this law in favor of requiring all covered entities to comply with the HIPAA Privacy Rule's provision regarding access to PHI in a designated record set. K-HITE also establishes the maximum amount a covered entity may charge any person or entity for copies of such information, as HIPAA defers to state law on this point. These amounts are the same as now listed in K.S.A. 64-4970 *et seq.*

Safeguarding. Unlike HIPAA, there is no explicit provision of Kansas law requiring covered entities to adopt administrative, technical, or physical safeguards to protect PHI from inadvertent disclosures. Instead, this requirement is implicit in state licensure laws, which require providers to take appropriate measures to protect patient confidentiality. K-HITE clarifies that a covered entity that complies with the HIPAA safeguarding requirements satisfies any similar state law requirement. Stated another way, a state licensing agency could not take adverse action against a licensee or a private individual could not sue a provider based on failure to safeguard PHI if secured in a manner required by HIPAA.

Uses and Disclosures. Rather than amending dozens of state statutes and regulations which require a covered entity to obtain patient authorization prior to using or disclosing PHI, K-HITE states any such provision which may be contrary to, inconsistent with, or more restrictive than HIPAA is superseded by the new law. The proposed law, however, preserves statutory privileges and rules regarding use and disclosure of PHI in the possession or custody of any state agency.

For example, K.S.A. 65-5601 *et seq.*, states that an authorization must be obtained for any disclosure of information relating to diagnosis and treatment of mental, alcoholic, drug dependency, or emotional condition of a patient of a treatment facility (*i.e.*, a community mental health center, community service provider, psychiatric hospital, or state institution for the mentally retarded). The statute lists limited circumstances in which an authorization is not required, but those exceptions are

[1] As discussed below, K-HITE establishes rules regarding a covered entity's disclosure of PHI for purposes of health information exchange. A covered entity would be responsible for complying with these rules, in addition to HIPAA.

narrower than those listed in HIPAA. Under K-HITE, if a provider disclosed such information without an authorization as permitted under HIPAA, but not under the state statute, the provider would be immune from any liability arising out of the state law.[2]

Authorization. HIPAA includes a very specific list of requirements for a valid written authorization for the use or disclosure of protected health information. Covered entities spend a great deal of time and energy reviewing authorization forms received from third parties to determine whether such forms comply with HIPAA requirements, and some refuse to accept any form other than the one developed by that covered entity. K-HITE directs KDHE to develop a standard authorization form which satisfies HIPAA's requirements which covered entities and others can rely upon to facilitate appropriate disclosures of PHI.

Disclosures to an HIO. The section of the draft legislation addressing the privacy of PHI also establishes rules regarding the disclosure of an individual's PHI to an entity operating a health information exchange. This provision is discussed in greater detail in the sections below concerning approved HIOs.

II. Adopt Uniform Rules Regarding Identification of Personal Representatives or Health-Related Matters

Unlike other states, Kansas does not have a statute identifying who has the authority to act on behalf of an incapacitated adult, minor, or deceased individual for health-related matters in the absence of a durable power of attorney for health care decisions or legal guardian. The absence of a defined "pecking order" creates problems for providers in a number of situations, *e.g.*,

- consent for treatment
- an individual's authorization for use or disclosure of that individual's protected health information
- an individual's exercise of individual rights with respect to inclusion of PHI within an approved HIO (*see* section below concerning HIOs)
- consent for autopsy
- disposition of a decedent's remains
- consent for anatomical gift of decedent's body or part
- informed consent for an individual's participation in a research protocol
- an individual's exercise of individual rights under HIPAA or other state or federal statute or regulation

[2] Again, K-HITE establishes state law rules regarding disclosures for purposes of health information exchange, and covered entities may be liable for failure to adhere to those rules. *See* Section II of this memorandum.

As a result, providers are left to make their best guess regarding the appropriate individual to act on behalf of another individual and can face liability if their decision is challenged by an interested party.

With respect to incapacitated adults and deceased individuals, K-HITE establishes a priority order of whom a provider may rely to act as a personal representative of such individual.[3] With respect to minors, K-HITE clarifies a current ambiguity in the law by stating the person who has authority to consent for treatment for a minor also has the authority to act as the minor's personal representative for other enumerated purposes. In those cases in which no such person is available to consent on behalf of the minor, K-HITE establishes a priority order of individuals to act on behalf of the minor.[4] K-HITE also clarifies that upon reaching the age of majority or otherwise becoming emancipated, an individual gains control over his or her PHI, and that any person who previously consented for health care on behalf of the individual no longer may gain access or otherwise exercise control over that information.

K-HITE states that a provider who in good faith relies on an individual so designated as a personal representative shall be immune from any sort of liability arising out of such decision. K-HITE clarifies that no provision is intended to amend or repeal Kansas law regarding durable powers of attorney for health care, the Kansas natural death act, or statutory provisions regarding DNRs. Finally, the proposed legislation states an individual acting as a personal representative does not have the authority to revoke an individual's appointment of a durable power of attorney for health care decisions or a Kansas natural death act declaration.

III. Establish Standards for Approved HIOs

Paragraphs 20 and 21 of Executive Order 10-06 (a copy of which is attached as **Exhibit E**) charge KHIE with "promulgat[ing] standards for approval of and operation of statewide and regional [HIOs] in the state which shall be designated as "approved [HIOs]."[5] K-HITE incorporates these paragraphs, and then provides specific directions regarding one of these standards, participation agreements.

As a condition of receiving approval, an HIO must enter into a written participation agreement with any covered entity that discloses PHI to the HIO. That agreement must specify the

---

[3] (1) the incapacitated adult's or deceased individual's spouse; (2) any adult son or daughter of the incapacitated adult or deceased individual; (3) either parent of the incapacitated adult or deceased individual; (4) any adult brother or sister of the incapacitated adult or deceased individual; (5) any adult grandchild of the incapacitated adult or deceased individual; or (6) a close friend of the incapacitated adult or deceased individual.

[4] (1) any person designated in writing by such parent or legal guardian to consent for the provision of health care by a health care provider for the minor; (2) any grandparent of the minor; (3) any adult brother or sister of the minor; (4) any adult aunt or uncle of the minor; (5) any adult cousin of the minor; or (6) any adult close friend of the minor's parent or legal guardian.

[5] The Executive Order uses the term "health information exchange" and references "HIEs." K-HITE uses the term "health information organization" and references "HIOs." "HIO" is the term now commonly used to refer to an entity that operates a health information exchange.

terms on which the covered entity will disclose PHI to the HIO, as well as the terms on which the covered entity may access an individual's PHI from the HIO.

Most importantly, the participation agreement must require the covered entity to give written notice to any person whose PHI is to be disclosed to the HIO. This notice is key to the "opt out" approach, as discussed in Section IV.

Although KHIE approval is not required for an HIO to conduct business in Kansas, K-HITE states that a provider cannot disclose any PHI to an HIO without the individual's written authorization unless the HIO has been approved by KHIE. As a practical matter, therefore, providers will be unwilling to accept the risk associated with disclosures to non-approved HIOs. Also, K-HITE provides that only approved HIOs are eligible for any form of financial assistance from the state, or assistance or support from the state in securing any source of funding.

IV. Provide Individual Notice and Opportunity to Opt Out of Disclosures to HIOs

Under the HIPAA Privacy Rule, a covered entity can disclose an individual's PHI for treatment purposes without a written authorization. The regulation requires the covered entity afford the individual an opportunity to request restrictions on disclosures for such purposes, but the covered entity is not required to honor those requests. Thus, absent some provision in state law, a covered entity could disclose PHI to an HIO without any notice to or authorization from the individual.

As discussed previously, K-HITE, by harmonizing Kansas law with HIPAA, would eliminate any barriers to disclosure of an individual's PHI to an HIO. To ensure consumer confidence in and support for HIE, however, patients should receive notice that their PHI will be included in an HIE, and have the opportunity to exercise some degree of control over such disclosures.

There are three possible options for consumer involvement: (1) notice only, with the opportunity to request restrictions as provided in HIPAA; (2) notice with an opportunity to opt out, and requiring the provider to honor such reasonable requests; (3) notice with disclosure to the HIO conditioned on the individual's "opt in." K-HITE elects the second option.

As explained in Section III, K-HITE requires a covered entity to enter into a participation agreement with an approved HIO as a condition of disclosing any PHI to that HIO. That agreement requires the provider to furnish written notice to an individual before disclosing his/her PHI to the HIO. K-HITE specifies the content of such notice, including (a) that the individual's PHI will be disclosed to the approved HIO to facilitate the provision of health care to the individual, and (b) that the individual (or his or her personal representative) has the right to request in writing that the covered entity not disclose any or specified categories of the individual's PHI to the approved HIO. A provider who complies with these requirements in disclosing PHI to an approved HIO would be immune from any liability relating to such disclosure.

It is contemplated these notices will be incorporated into the standard HIPAA Notice of Privacy Practices a covered entity now is required to provide to individuals with whom the provider has a direct treatment relationship. K-HITE also charges KHIE, Inc., with developing other provisions to be included in participation agreements between approved HIOs and covered entities intended to protect and preserve individuals' right to notice and opportunity to opt out.

To illustrate this process, we have included as **Exhibit F** a chart demonstrating the roles and responsibilities of each player in the process, including the individual, the provider, the approved HIO, and KHIE, Inc.

V. Amend the Uniform Electronic Transactions Act to Include Health-Related Transactions

The Kansas Uniform Electronic Transactions Act addresses the enforceability of records validated with an electronic signature. K-HITE expands the definition of "transaction" to include the provision of health care services, thus eliminating any question regarding the validity of electronic signatures on health records.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Committee on Public Health and Welfare introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1851—

A RESOLUTION urging review, modification and reorganization of laws pertaining to the maintenance and availability of health information.

WHEREAS, Kansans have an interest in the confidentiality, security, integrity and availability of their health information; and

WHEREAS, The availability, quality and efficiency in the delivery of health care, including establishment of medical homes, depend upon the efficient and secure collection, use, maintenance and exchange of health information; and

WHEREAS, The use of current and emerging technology facilitates the efficient and secure collection, use, maintenance and exchange of health information; and

WHEREAS, Kansas' out-dated and decentralized statutory and regulatory scheme, as well as its interaction with federal mandates, creates confusion and is a significant barrier to the efficient and secure collection, use, maintenance and exchange of health information: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the laws of Kansas should be reviewed, modified as necessary and construed so as to protect the interests of individuals in the confidentiality, security, integrity and availability of their health information; promote the use of modern technology in the collection, use, maintenance and exchange of health information; promote uniformity in policy and codify all standards in a cohesive and comprehensive statutory structure; and

Be it further resolved: That the Secretary of the Senate is directed to provide an enrolled copy of this resolution to the E-Health Advisory Committee, Kansas Health Policy Authority.

REPORTS OF STANDING COMMITTEES

Committee on **Federal and State Affairs** recommends **SB 247** be passed.

Also, **SB 75** be amended on page 1, in line 27, preceding the period by inserting ", or the consolidation of offices, functions, services and operations"; and the bill be passed as amended.

SB 179 be amended on page 1, in line 40, by striking "unlawfully"; in line 42, after "activity" by inserting ", in whole or in part,"; in line 43, by striking "when" and inserting "except when the officer has reason to believe"; also in line 43, by striking all after "The";

On page 2, in line 1, by striking "reason to believe the"; in line 2, by striking all after "(B)"; in line 3, by striking "information leading a reasonable law enforcement officer to believe"; in line 5, by striking "the"; by striking all in line 6; in line 7, by striking "reasonable law enforcement officer to believe"; in line 9, by striking "not"; in line 10, after the comma where it appears the second time, by inserting "or"; also in line 10, by striking "or religious dress"; in line 41, after "design" by inserting ", develop and implement"; also in line 41, by striking ", analysis"; in line 42, by striking all after "stops"; by striking all in line 43;

On page 3, in line 1, by striking "this subsection shall be designed no later than January 1, 2010" and inserting "of motorists and passengers"; after line 23, by inserting the following:

"(h) The provisions of this section shall expire on July 1, 2011.";

Also on page 3, in line 25, following the stricken material by inserting "(a)"; in line 26, following the stricken material by inserting "a factor"; in line 30, after "vehicle" by inserting "or pedestrian"; after line 30, by inserting the following:

"(b) No law enforcement officer shall use violations of the traffic laws as a pretext for racial profiling.";

On page 4, in line 18, by striking "and" the second time it appears, and inserting a comma; also in line 18, after "ordinances" by inserting "and labor contracts"; in line 43, by striking "specific";

On page 5, after line 18, by inserting the following:

"(b) Upon finding that an investigation is necessary, the commission shall be responsible for timely notification of the law enforcement officer or officers and their respective law enforcement agency that an investigation has been initiated and shall provide: (1) A copy

Health & Human Services
Date: 3-8-11
Attachment: 5

5-1

e-HAC LEGAL WORK GROUP

NAME/TITLE	ADDRESS	E-MAIL	TELEPHONE	TELEFACSIMILE
Douglas K. Anning, Esq. Attorney	Polsinelli Shughart PC 700 W. 47th St., Ste. 1000 Kansas City, MO 64112-1805	danning@polsinelli.com	816.360.4188	816.753.1536
Joannah M. Applequist, Esq. In-House Counsel & Corporate Compliance Officer	Hays Medical Center 2220 Canterbury Dr. Hays, KS 67601	japplequist@haysmed.com	785.650.2759	785.623.5018
Mary Beth Blake, Esq. Attorney	Polsinelli Shughart PC 700 W. 47th St., Ste. 1000 Kansas City, MO 64112-1805	mblake@polsinelli.com	816.360.4284	816.572.5084
Cydney D. Boler, Esq. Special Counsel	Foulston & Siefkin, LLP 9 Corporate Woods 9200 Indian Creek Pkwy., Ste. 450 Overland Park, KS 66210	cboler@foulston.com	913.253.2158	913.498.2101
Lawrence T. Buening, Jr. Special Assistant, Legal Division	Kansas Dept. of Social and Rehabilitation Services Docking State Office Bldg. 915 SW Harrison, 6th Fl. S. Topeka, KS 66612	Larry.Buening@srs.ks.gov	785.296.6821	785.296.4960
Michelle Carter-Gouge, Esq. General Counsel	Coventry Health Care 8535 E. 21st St. N. Wichita, KS 67206	mcarter@phsystems.com	316.609.2755	316.609.2346
Joann E. Corpstein, Esq. Chief Counsel	Kansas Department on Aging 503 S. Kansas Ave. Topeka, KS 66603-3404	Joann.corpstein@aging.ks.gov	785.368.7228	785.296.0767
Jeffrey O. Ellis, Esq. Attorney	Spencer Fane Britt & Browne LLP 9401 Indian Creek Pkwy., Ste. 700 Overland Park, KS 66210	jellis@spencerfane.com	913.327.5139	913.345.0736
H. Philip Elwood, Esq. Attorney	Goodell, Stratton, Edmonds & Palmer, LLP 515 S. Kansas Ave. Topeka, KS 66603-3999	pelwood@gseplaw.com	785.233.0593	785.233.8870

Health & Human Services
Date: 3-8-11
Attachment: 9

1-9

EXHIBIT B

Frankie J. Forbes, Esq. Attorney	Forbes Law Group, LLC 10740 Nall Ave., Ste. 330 Overland Park, KS 66211	fforbes@forbeslawgroup.com	913.341.8608	
Ann Halferty, Esq. General Counsel	Kansas Health Policy Authority Landon State Office Bldg. 900 SW Jackson St., 9th Fl. Topeka, KS 66612	ann.halferty@khpa.ks.gov	785.296.8347	785.296.8017
Charles R. (Dick) Hay, Esq. Attorney	Foulston Siefkin LLP Bank of America Tower, Ste. 1400 534 S. Kansas Ave. Topeka, KS 66603-3436	dhay@foulston.com	785.354.9413	866.347.5155
Dennis Highberger, Esq. Attorney	Kansas Dept. of Health & Environment Curtis State Office Bldg. 1000 SW Jackson St., Ste. 540 Topeka, KS 66612-1368	dhighber@kdheks.gov	785.296.3426	
Joy M. Jacobsen, MHSA Privacy/Compliance Officer	CareEntrust 1100 Walnut, Ste. 2980 Kansas City, MO 64106	jjacobsen@CareEntrust.org	816.221.7710 ext 4	816.221.7702
Marta Fisher Linenberger, Esq. Attorney	Foulston Siefkin LLP Bank of America Tower, Ste. 1400 534 S. Kansas Ave. Topeka, KS 66603-3436	mlinenberger@foulston.com	785.233.3600	866.347.5161
Tim Madden, Esq. Sr. Counsel to the Secretary	Kansas Dept. of Corrections 900 SW Jackson St., 4th Fl. Topeka, KS 66612	timm@doc.ks.gov	785.296.4508	
Paul G. Marx, Esq. Attorney	Kansas Dept. of Health & Environment Curtis State Office Bldg. 1000 SW Jackson St., Ste. 560 Topeka, KS 66612-1368	pmarx@kdheks.gov	785.296.6917	785.296.7119
Kerry McQueen, Esq. Attorney	Sharp McQueen, PA 419 N. Kansas Ave. Liberal, KS 67905-2619	kmcqueen@sharpmcqueen.com	620.624.2548	620.624.9526
John W. Mize, Esq. Attorney	Clark, Mize & Linville, Chartered PO Box 380 Salina, KS 67401	jwmize@cml-law.com	785.823.6325	785.823.1868

Thomas P. O'Donnell Attorney	Polsinelli Shughart PC 700 W. 47th St., Ste. 1000 Kansas City, MO 64112-1805	todonnell@polsinelli.com	816.360.4173	
Cody G. Robertson, Esq. Attorney	Goodell, Stratton, Edmonds & Palmer, LLP 515 S. Kansas Ave. Topeka, KS 66603-3999	crobertson@gseplaw.com	785.233.0593	785.233.8870
Martie Ross, Esq. Attorney	Spencer Fane Britt & Browne LLP 9401 Indian Creek Pkwy., Ste. 700 Overland Park, KS 66210	mross@spencerfane.com	913.327.5152	913.345.0736
Julie A. Roth, Esq. Attorney	Sisters of Charity of Leavenworth Health System, Inc. 9801 Renner Blvd., Ste. 230 Lenexa, KS 66219-9745	julie.roth@sclhs.net	913.895.2800	
Steve A. Schwarm, Esq. Senior Operations Counsel	Sisters of Charity of Leavenworth Health System, Inc. 9801 Renner Blvd., Ste. 230 Lenexa, KS 66219-9745	Steve.schwarm@sclhs.net	913.895.8177	
Daric S. Smith, Esq. Staff Attorney, Legal Services	Kansas Dept. of Health & Environment Curtis State Office Bldg. 1000 SW Jackson St., Ste. 560 Topeka, KS 66612-1368	dsmith@kdheks.gov	785.296.1333 or 785.296.6917	785.291.3607
Mark W. Stafford, Esq. Attorney	Holbrook & Osborn, PA Commerce Plaza II 7400 W. 110th St., Ste. 600 Overland Park, KS 66210-2362	mstafford@holbrookosborn.com	913.342.2500	913.342.0603
Deborah F. Stern, RN, Esq. Vice President Clinical Services & General Counsel	Kansas Hospital Association 215 SE 8th Ave. Topeka, KS 66603	dstern@kha-net.org	785.276.3124	785.233.6955
Brian M. Vazquez, JD, Esq. Deputy General Counsel	Kansas Health Policy Authority Landon State Office Bldg. 900 SW Jackson St., 9th Fl. Topeka, KS 66612	brian.vazquez@khpa.ks.gov	785.296.0696	785.296.8017

Catherine Walberg, JD, Esq. General Counsel/Vice President	KaMMCO 623 SW 10th St. Topeka, KS 66614	cwalberg@kammco.com	785.357.2720	785.232.4704
Michelle M. Watson, Esq.	Gilliland & Hayes, PA 1300 Epic Center 301 N. Main Wichita, KS 67202-4813	mwatson@gh-wichita.com	316.264.7321	316.264.8614

FINAL

eHealth Advisory Council 2009-2010
Legal and Policy Workgroup Charter

Purpose
The Legal and Policy Workgroup is responsible for reviewing Kansas statutes and regulations and proposing legislative revisions that will remove barriers and promote the adoption of HIT and HIE both intrastate and interstate. In addition, this Workgroup is responsible for creating a common set of rules to enable inter-organizational and eventually interstate HIT and HIE while protecting consumer interests.

Charge
Review Kansas law and regulations to:

- Harmonize such laws, both internally and with federal law.
- Remove barriers to the adoption of HIT and promote HIE within the state.
- Develop proposed statutory revisions to promote the implementation of an HIE statewide and interstate connectivity, including the following:
    - Legislation authorizing the development of the statewide HIE.
    - Legislation which would provide the legal framework to operationalize a statewide plan for HIT and HIE.
    - Legislation which assures the privacy and security of personal health information.
    - Legislation which provides legal protection for providers and patients who participate in HIT and HIE.
- Develop model policies and agreements to operationalize statewide HIT and HIE, including:
    - Model data-sharing agreements.
    - Model HIT and HIE participation agreements.
    - Appropriate consents and authorizations allowing for the exchange of health information.
    - Model contracts to operationalize a statewide HIT and HIE.
    - Vendor contracts and other legal agreements to guide technical services.
- Support the legal needs of statewide HIT and HIE governance entity and meet other important state policy requirements such as those related to public health and vulnerable populations.
- Propose enforcement mechanisms that ensure those implementing and maintaining health information exchange services have appropriate safeguards in place and adhere to legal and policy requirements that protect health information, thus engendering trust among HIT and HIE participants.
- Ensure policies and legal agreements needed to guide technical services prioritized by the state are implemented and evaluated as a part of annual program evaluation.

Deliverables
1. Describe the legal process required to enable HIT and HIE in Kansas.
2. Describe the laws to be amended and develop proposed legislative package by the end of 2009.
3. Describe the process for developing and maintaining policies to support the HIE.
4. Describe the process for creating, vetting, and executing trust agreements.

Health & Human Services
Date: 3-8-11
Attachment: 7

5. Facilitate and support legislative or legal changes to insure effective use of the state's infrastructure, such as Kan-ed.

Workgroup Member Expectations

- Members will participate in the Workgroup through the completion of an operational plan for the health information exchange which is targeted for completion Summer 2010.
- Lend your expertise to all discussions and decisions.
- Keep the statewide interests of Kansas e-Health foremost in your decisions and recommendations.
- Create the most appropriate legal framework for advancing HIE in Kansas which allows for collaboration and development of intrastate and interstate HIE.
- Review meeting materials ahead of time and be prepared to contribute clear and focused ideas for discussion.

Performance Measures

- How many trust agreements have been signed?
- Do privacy policies, procedures, and trust agreements incorporate provisions allowing for public health data use?

Value in Participating

- Proactively help to shape future policy directions that will ultimately impact your organization.
- Enable your organization to be more prepared to respond to related development and progress as it is achieved.

Workgroup Leadership

- Chair: Jeff Ellis

Members

Doug Anning
Joannah Applequist
Mary Beth Blake
Cydney Boler
Larry Buening
Michelle Carter-Gouge
Joann Corpstein
Phil Elwood
Frankie Forbes
Ann Halferty
Dick Hay
Scott Hesse
Dennis Highberger
Joy Jacobsen
Jody Joiner
Marta Fisher Linenberger
Tim Madden
Paul Marx
Kerry McQueen
John Mize
Tom O'Donnell

Cody Robertson
Martie Ross
Julie Roth
Steve Schwarm
Daric Smith
Mark Stafford
Deborah Stern
Brian Vazquez
Catherine Walberg

Workgroup Staff

Aaron Dunkel, Deputy Secretary, KDHE, ADunkel@kdheks.gov
Joe Brisson, Principle, HIT Associates, Brissonjoe@hotmail.com
Greg Smith, HIT Associates, smithg@ksu.edu
Kathleen Harnish-Doucet, TeamTech, Inc., kathleen@teamtechinc.com
Joel Wright, TeamTech, Inc., joel@teamtechinc.com

Kansas Health Information Technology and Exchange Act

Legislative Proposal Developed By the Kansas e-Health Advisory Council Legal Work Group

January 14, 2010

K-HITE Provisions

1. Definitions
2. Privacy of protected health information
3. Personal representative
4. Disclosure of PHI for Public Health Purposes
5. Uniform Electronic Transactions Act
6. State HIT Plan and Approved HIEs

Definitions

- Incorporate HIPAA and ARRA definitions
- Key terms
  - Health information technology
  - Electronic health record
  - Personal health record
  - Interoperability
  - Health information exchange
    - Approved HIE
    - Participation agreement

Current Kansas Privacy Laws

- HIPAA Privacy Rule preempts state law unless such law affords greater privacy protections
- Kansas statutes and regulations littered with inconsistent privacy-related provisions
- Significant confusion regarding what rule applies in a particular situation
- Uncertainty freezes up exchanges of PHI

Proposed Changes

- Harmonize Kansas law with HIPAA Privacy Rule to facilitate use of EHR and HIE
- Adoption of the following HIPAA Privacy Rule provisions
  - Access to PHI
    - Repeal KSA 65-4970 *et seq.*; establish copy/production fees
  - Proper safeguarding of PHI
  - Use and disclosure of PHI
- Development of standard authorization form

Immunity

- Impossible task of identifying and amending existing statutes and regulations
- Instead, provide immunity for covered entity that complies with access, safeguarding, and use and disclosure rules
  - Criminal prosecution
  - Civil liability
  - Adverse disciplinary or licensure action
- Does not reduce privacy protections; instead provides for certainty and uniformity

Health & Human Services
Date: 3-8-11
Attachment: 8

Enforcement

- Like HIPAA Privacy Rule, no private cause of action
- No provision for state enforcement
  - Covered entities subject to increased enforcement and penalties under HITECH
  - At state level, a covered entity that violates the rules may be subject to:
    - Professional discipline or adverse licensure action
    - Referrals for HHS-OCR
    - Private causes of action under state common law for negligence, invasion of privacy, etc.

Disclosures to HIEs

- Under the HIPAA Privacy Rule:
  - Disclosures for treatment purposes do not require authorization
  - No opportunity for individual to request restrictions on disclosures for treatment purposes
- Our challenge: how do we establish consumer trust yet achieve the objectives of HIEs?

Notice and Opportunity to Opt Out/Request Restrictions

- Provider immune from liability for disclosures of PHI to an HIE if:
  - Current participation agreement with approved HIE
  - Disclose PHI consistent with HIE's procedures
  - Gve individual notice of opportunity to opt out/request restrictions on disclosures to the HIE
  - Adhere to individual's request for restrictions in disclosing PHI to HIE

Personal Representative

- List purposes for which personal representative may act on behalf of incapacitated adult, minor, or deceased individual
- Identify order of priority for incapacitated adults and deceased individual
- Establish that person who consents for treatment for minor also serves as personal representative for all specified purposes
- Grant immunity to providers who in good faith rely on personal representative's decision

Kansas Health Information Corporation

- State-designated public/private partnership to serve as "one-stop shop" for HIT/HIE
- Direct stakeholder involvement on Board, *e.g.*:
  - State government
  - Physicians
  - Nurses
  - Pharmacy
  - Dentisty
  - Mental Health
  - Health Plans
  - Consumers
  - Hospitals
  - Public Health
  - Long-term Care
  - Laboratories
  - Safety Net Providers
  - Employers

K-HIC's Delegated Responsibilities

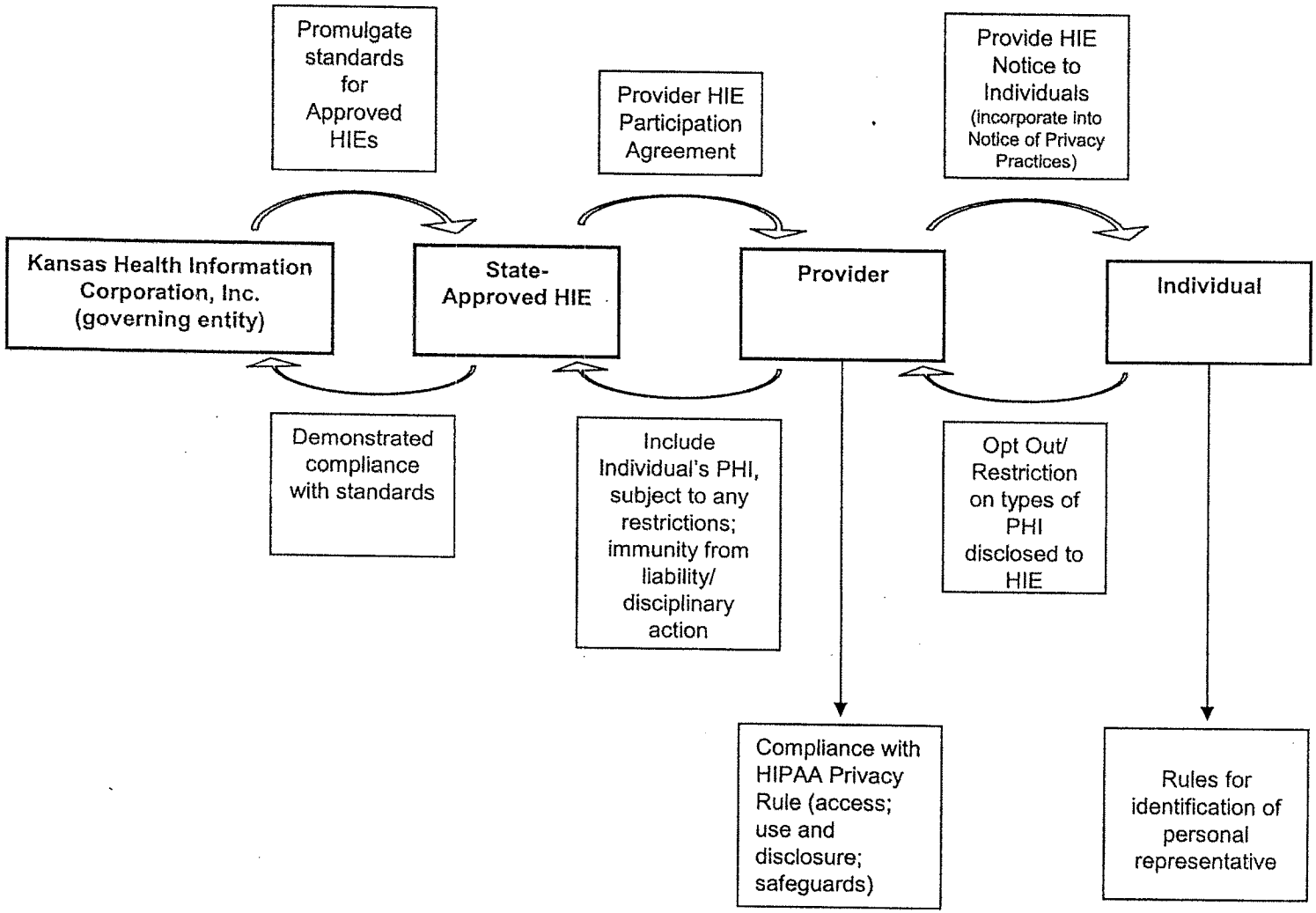
- State HIT Plan
- Loan and grant programs
- Promote adoption of EHRs (Medicaid incentive payments)
- Develop and implement education programs targeting providers and consumers
- Establish standards for approved HIEs
- Designate and oversee approved HIEs

Approved HIEs

- Develop standards
  - Federal certification requirements
  - Appropriate safeguards
  - Provider participation agreements
- Develop approval and monitoring processes

Participation Agreements

- Procedures to disclose PHI to HIE
- Procedures to access PHI from HIE
- Written notice to individuals
  - Content
  - Document delivery of notice to individuals
  - Require compliance with opt out/restrictions
  - Standards to determine reasonableness of restrictions


Promulgate standards for Approved HIEs
Provider HIE Participation Agreement
Provide HIE Notice to Individuals (incorporate into Notice of Privacy Practices)
Kansas Health Information Corporation, Inc. (governing entity)
State-Approved HIE
Provider
Individual
Demonstrated compliance with standards
Include Individual's PHI, subject to any restrictions; immunity from liability/ disciplinary action
Opt Out/ Restriction on types of PHI disclosed to HIE
Compliance with HIPAA Privacy Rule (access; use and disclosure; safeguards)
Rules for identification of personal representative

06.30.2010 - Executive Order 10-06 Kansas Health Information Exchange, Inc.

WHEREAS, the State of Kansas is committed to a health care delivery system that supports the secure exchange of health information for the purposes of ensuring quality, confidentiality, efficiency and effectiveness of patient-centered health care for all Kansans; and

WHEREAS, on July 24, 2009 the Governor of the State of Kansas identified the Kansas Department of Health and Environment ("KDHE") as the state agency leading health information technology planning and implementation for the State of Kansas, and

WHEREAS, the American Recovery and Reinvestment Act of 2009 ("Recovery Act") committed more than $2 billion to the Office of the National Coordinator for Health Information Technology ("ONC") to ensure that all Americans have an electronic health record by 2014; and

WHEREAS, $34 billion in Recovery Act funding is dedicated for financial incentives to Medicaid and Medicare providers nationally for the adoption and meaningful use of electronic health records, and as such, the state has a compelling interest in assisting Kansas providers to qualify for those incentives; and

WHEREAS, ONC released a funding opportunity announcement August 20, 2009 based on the Recovery Act, Title XII – Health Information Technology, Subtitle B – Incentives for the Use of Health Information Technology, §3013, requesting states to take a lead role in the development and implementation of health information exchanges ("HIEs") in the United States; and

WHEREAS, the stated purpose of this funding is to assist in the creation and implementation of the governance, policy and technical infrastructure, which will enable standards-based HIE and a high performance health care system; and

WHEREAS, it is envisioned that HIE will assist in widespread adoption and meaningful use of health information technology as one of the foundational steps in improving the quality and efficiency of health care, to ensure the appropriate and secure electronic exchange and consequent use of health information to improve quality and coordination of care as a critical enabler of a high performance health care system, and to facilitate and expand the secure, electronic movement and use of health information among organizations according to nationally recognized standards; and

WHEREAS, the State of Kansas was awarded funding amounting to $9,010,066 on February 12, 2010, through the State Health Information Exchange Cooperative Agreement Grant Program ("Program") through the ONC; and

WHEREAS, the formation of a state-wide HIE is contemplated in the grant guidance and will be part of the final strategic and operational plan ("State Plan") for Kansas under the grant; and

WHEREAS, the State Plan is due to ONC by August 31, 2010; and

WHEREAS, the Secretary of KDHE has promoted and the eHealth Advisory Council ("eHAC"), an advisory council formed by the Secretary of KDHE, recommended the formation of a not-for-profit, public-private partnership for the purpose of operating the Kansas Health Information Exchange consistent with the report of the Kansas Health Information Technology/Health Information Exchange Policy Initiative and the charge of the Kansas Health Information Exchange Commission (Executive Order 07-02) in coordination with state agencies and the Kansas Regional Extension Center.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby establish the Kansas Health Information Exchange, Inc. ("corporation") with the following purposes and charges:

1. The Governor of the State of Kansas shall serve as incorporator of a body politic and corporate to be known as the Kansas Health Information Exchange, Inc. ("corporation"), a Kansas not-for profit corporation which shall be structured to qualify for tax-exemption as a charitable organization and as a supporting organization of the State of Kansas pursuant to §§501(c)(3) and 509(a)(3) of the Internal Revenue Code of 1986 as amended. The Governor shall incorporate the corporation as soon as practical following the issuance of this order.

2. The corporation shall act as a public instrumentality. The corporation's exercise of the authority and powers conferred by this order and pursuant to any contracts necessary between state agencies and the corporation to allow for the full oversight of the corporation in regards to the intent of this order shall be deemed and held to be the performance of an essential governmental function.

3. The corporation shall have all the powers necessary to achieve the purposes specified herein, including the power to:

(a) accept and receive grants, gifts, or donations of money, property, services, or other things of value from any public or private entity to be held, used, or applied for any or all of the purposes specified in this order;

(b) establish administrative and accounting procedures for the operation of the corporation and enter into contracts as may be necessary under this order;

(c) provide and pay the reasonable costs of operation of advisory committees established by the board pursuant to section 4 below. Such costs may include services and technical assistance that may be necessary or desirable to carry out the purposes of this order and such work as may be assigned to or requested of the advisory committee(s) by the board

Health & Human Services
Date: 3-8-11
Attachment: 9

(d) subject to board approval, enter into contracts, agreements, interstate compacts, or other transactions with any federal, state, county, or municipal agency, or with any individual, corporation, private foundation, enterprise, association, or any other entity within or outside the state for the purpose of fulfilling its mission and duties;

(e) appoint or employ staff, officers, consultants, agents, and advisors, and prescribe their duties and compensation;

(f) promulgate and enforce standards for approval and operation of statewide and regional HIEs in the state including, but not limited to, rules regarding (a) access to and use and disclosure of protected health information maintained by or on an HIE, and (b) appropriate administrative, physical, and technical safeguards to ensure the confidentiality, integrity, and availability of protected health information maintained by or on an HIE; and

(g) exercise any other powers necessary for the operation and functioning of the corporation within the purposes authorized in this order.

4. The corporation shall be governed by a board of directors ("board") comprised of residents of this state. Upon incorporation and until such time as a board of directors is constituted pursuant to duly adopted bylaws of the corporation, the existing eleven-member steering committee of the eHAC shall act as the transitional board of the corporation, with the Secretary of KDHE acting as the chairperson of such transitional board. The transitional board shall develop and approve bylaws for the corporation consistent with the provisions of this order and applicable law. The transitional board shall continue to advise KDHE in development of the State Plan in collaboration with the eHAC.

5. The board shall appoint 1 or more advisory committees to assure that the interests of the public and the stakeholders are represented. Any such advisory committee shall be broadly representative and include health care providers (including providers who serve low income and underserved populations), health plans, patient or consumer groups, health information technology vendors, employers, public health departments, health professions training programs, schools and universities, clinical researchers, representatives of regional HIEs and other users of health information technology, including those involved in care coordination of patients.

6. No part of the funds of the corporation shall inure to the benefit of, or be distributed to, its employees, officers or members of the board, except that the corporation may make reasonable payments for expenses incurred on its behalf relating to any of its lawful purposes and the corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for its benefit relating to any of its lawful purposes, including to pay its employees reasonable compensation. Upon dissolution of the corporation, any assets remaining after the satisfaction of all the corporation's obligations shall be paid over and become the property of the state and shall inure to the benefit of the residents of the State of Kansas.

7. The corporation shall be subject to the Kansas open meetings act and the Kansas open records act, except that documents and other materials submitted to the corporation shall not be public records if such records constitute protected health information, are the types of records described by K.S.A. 45-221(a)(1) and (3) or are trade secrets under the uniform trade secrets act (K.S.A. 60-3320 *et seq.* and amendments thereto).

8. The corporation shall not be subject to state purchasing laws.

9. The Governor will submit the corporation to ONC for approval as the official state designated entity for the state of Kansas, replacing KDHE in this role and assuming responsibility for promoting an HIE program. Fiduciary responsibility for the grant and the Office of the Health Information Technology Coordinator will stay with the state, through KDHE, as required by the ONC and the State HIE Cooperative Agreement Grant Program.

10. Consistent with federal requirements, the corporation shall assure that an HIE is created, operated and maintained in the state for the exchange of health information state-wide, which shall:

a. Facilitate the authorized and secure exchange of health information;

b. Use information technology to improve health care quality and efficiency through the authorized and secure electronic exchange and use of health information enabling ongoing achievement of meaningful use;

c. Connect regional health information exchanges and other stakeholders within the state to each other and to the Nationwide Health Information Network whenever it is established; and

d Connect subscribers to health information exchanges within and outside the state for the purpose of improving health care quality for individuals and patient populations.

11 The corporation shall facilitate the implementation of the State Plan consistent with the requirements of §3013(e) of the federal public health service act, 42 U.S.C 201 *et seq.*, and related guidance issued by the ONC

12. The corporation shall approve HIEs operating within the state consistent with sections 20 and 21 of this order with the intent of protecting the security, privacy and interest of the citizens of Kansas

13 The corporation may provide access to aggregated, de-identified health information, to be accessed for research purposes under such terms and conditions and subject to such controls, restrictions and limitations set forth in this order or as may from time-to-time be determined to be necessary or appropriate by the board.

14 The board of directors of the corporation shall consist of fifteen (15) voting members and two (2) non-voting members for a total of seventeen (17) members as follows:

a. The Secretary of the Kansas Department of Health and Environment; or his or her designee;

b The Executive Director of the Kansas Health Policy Authority, or his or her designee;

c. The Governor of the State of Kansas, or his or her designee;

d. 2 members appointed by the Governor who represent consumers;

e. 1 member appointed by the Governor who represents employers;

f. 1 member appointed by the Governor who represents payers;

g. 1 member appointed by the Governor who represents local health departments from a list of 3 names submitted by the Kansas Association of Local Health Departments;

h. 3 members appointed by the Governor who represent hospitals, from a list of 3 names for each position submitted by the Kansas Hospital Association. 1 of the hospital representatives appointed herein shall be involved in the administration of a critical access hospital;

i. 3 members appointed by the Governor from a list of 3 names for each position by the Kansas Medical Society. At least one of the physicians appointed herein shall be a physician in a primary care specialty;

j. 1 member appointed by the Governor who represents pharmacists, from a list of 3 names submitted by the Kansas Pharmacists Association;

k. 1 member, who shall be nonvoting, shall be a representative of the University of Kansas Center for Health Information; and

l. 1 member, who shall be nonvoting, shall be a representative of the Kansas Health Information Technology Regional Center.

15. Voting members of the board appointed pursuant to subsection 11 of this order shall serve for terms of 4 years, and shall be eligible for re-appointment, but voting members of the board shall not be eligible to serve more than 2 consecutive four-year terms. The members first appointed by the Governor shall serve for terms of 2 years. Upon the expiration of the terms first appointed by the Governor, the Governor shall appoint members to serve for terms of 4 years. Whenever a vacancy occurs regarding a member of the board due to the resignation, death, removal, or expiration of a term, such member shall be appointed according to the process and to the specific position on the board as described in Section 13 of this order In the event of a vacancy during an expired term due to resignation, death or removal of a board member, the appointment shall be for the remainder of the unexpired portion of the term. Each member of the board shall hold office for the term of appointment and until a successor has been appointed. Any member of the board other than a nonvoting member may be removed by the Governor for malfeasance or misfeasance in office, regularly failing to attend meetings, or for any cause which renders the member incapable of the discharge of the duties of director.

16. The board shall meet at least 4 times per year and at such other times as it deems appropriate, or upon call by the chairperson. The board shall make, amend, and repeal bylaws, standards, procedures, and rules and regulations for the management of its affairs, not contrary to law or inconsistent with this order, as it deems expedient for the governance and management of the corporation and the operation of the health information exchanges authorized herein.

17 The board shall elect a voting member as chair and at least one other voting member as vice-chair annually. The board shall also elect a secretary and treasurer for terms to be determined by the board. The board may elect the same person to serve as both secretary and treasurer. The board may establish an executive committee and other standing or special committees, and prescribe their duties and powers. Any executive committee of the board may exercise all such powers and duties of the board as the board may delegate

18 Members of the board are entitled to compensation and expenses as provided in K.S.A. 75-3223, and amendments thereto Members of the board attending board meetings or subcommittee meetings authorized by the board shall be paid mileage and all other applicable expenses, provided such expenses are consistent with policies established from time-to-time by the board.

19. The board shall adopt nondiscrimination and conflict of interest policies that demonstrate a commitment to open, fair, and nondiscriminatory participation by stakeholders.

20. The corporation shall promulgate standards for approval of and operation of statewide and regional HIEs in the state which shall be designated as "approved HIEs" including, but not limited to, the following:

a. Satisfaction of certification standards for health information exchange promulgated by the federal government;

b Adherence to national recognized standards for interoperability;

c. Adoption and adherence to rules promulgated by the corporation regarding access to and use and disclosure of protected health information maintained by or on a health information exchange,

d. demonstration of adequate financial resources to sustain continued operations in compliance with the aforementioned standards, rules and safeguards;

e. participation in outreach activities for individuals and covered entities;

f. conduct of operation in a transparent manner to promote consumer confidence;

g. implementation of security breach notification procedures; and

h. development of procedures for entering into and enforcing the terms of participation agreements with covered entities which satisfy the requirements established by the corporation.

21. The corporation shall establish and implement:

(a) a process by which an HIE may apply for and receive approval by demonstrating compliance with the standards promulgated by the corporation pursuant to sections 18 and 19 of this order;

(b) a process by which an approved HIE shall be re-approved on appropriate intervals by demonstrating continued compliance with the standards promulgated by the corporation pursuant to sections 18 and 19 of this order; and

(c) a process for the investigation of reported concerns and complaints regarding an approved HIE and imposition of appropriate remedial and proactive measures to address any identified deficiencies.

(d) a process whereby the Kansas department of health and environment, the Kansas health policy authority, the Kansas department of social and rehabilitation services and other state agencies, including regulatory agencies responsible for licensing and disciplining health care providers may access protected health information maintained by or on an approved HIE, to the extent such agencies are authorized by state or federal law to access such protected health information to carry out their respective duties under applicable law, and whereby these agencies will be able to use the HIE to carry out their statutory responsibilities as consistent with this order.

22. Any HIE which is not an approved HIE shall not be eligible for any financial support from the state, or assistance from the state in application for federal funding.

23. An approved HIE shall not be compelled by subpoena, court order, or otherwise, to disclose protected health information relating to an individual.

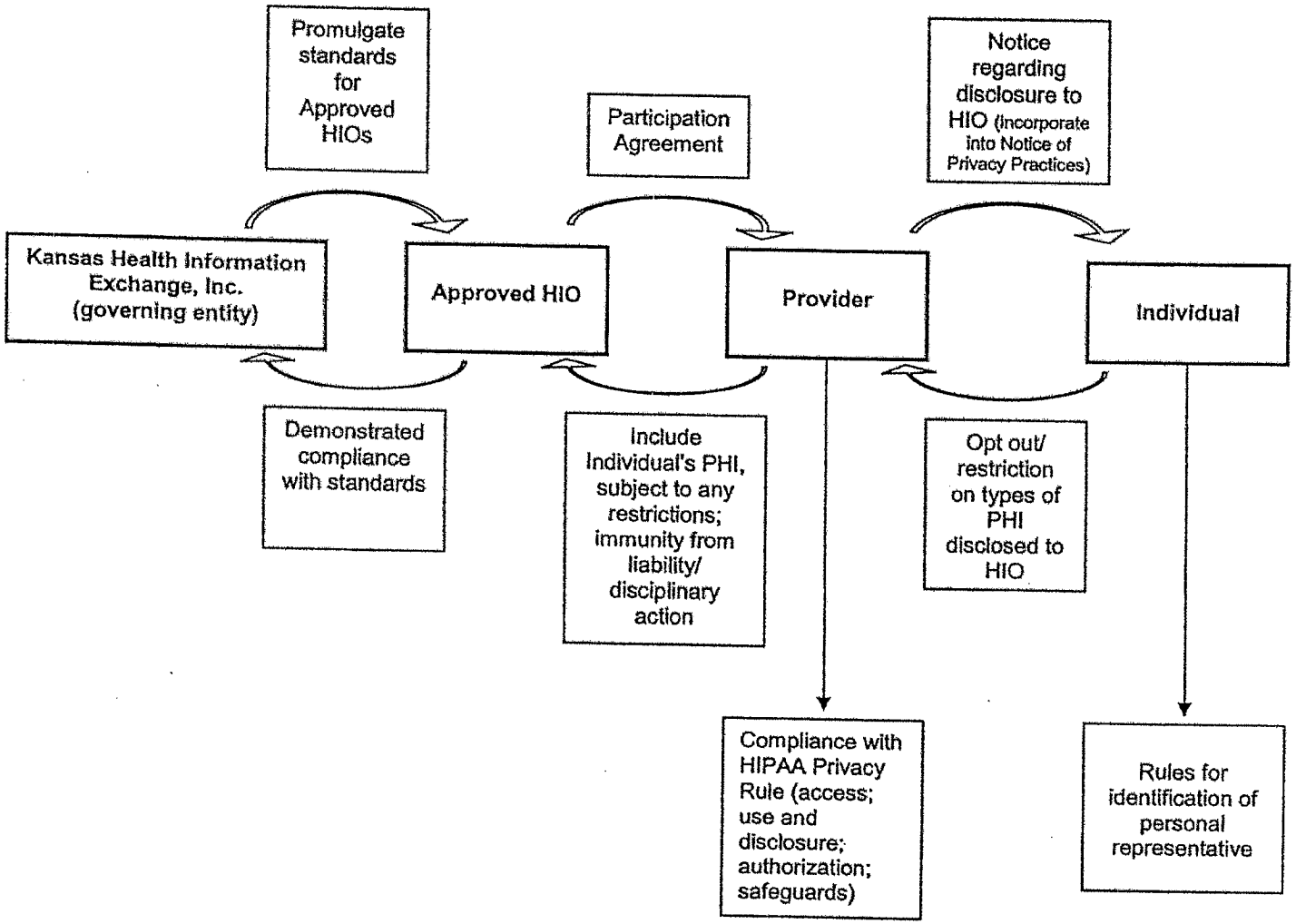
24. No use or disclosure of protected health information maintained by or on any approved HIE shall be made except pursuant to rules adopted by the corporation consistent with this order. The assets of the corporation shall be used solely for the purposes of the corporation as established by this order.

25. The corporation, in collaboration with departments and agencies of state government, may establish a loan and grant program to provide for the capitalization of electronic medical records systems for eligible health care providers. Health information technology acquired under a grant or loan authorized by this section shall comply with federal standards for meaningful use. An implementation plan for this loan and grant program may be developed which shall be consistent with the State Plan.

26. The corporation shall publish an annual report which shall include an audit in accordance with generally accepted accounting principles as of the close of each fiscal year of the corporation. The corporation shall present a report to the Governor and the legislature, setting forth in detail, the operations and transactions conducted by it pursuant to this order. The corporation shall distribute its annual report by such means that will make it widely available to the public.

This document shall be filed with the Secretary of State as Executive Order No. 10-06 and shall become effective immediately.

Kansas Health Information Technology and Exchange Act



Health & Human Services
Date: 3-8-11
Attachment: 10
10-1
EXHIBIT F

TO: House Health and Human Services Committee

FROM: Chad Austin
Vice President, Government Relations

DATE: March 8, 2011

SUBJECT: Senate Bill 133

Thank you for the opportunity to testify as a proponent of Senate Bill 133, the Kansas Health Information Technology and Exchange Act or K-HITE. The Kansas Hospital Association's 127 community hospital members believe that this legislation will provide much needed recognition of new electronic health records and exchange technology, clarify rules around its secure use and articulate a patient's ability to access and control information.

Hospitals, physicians and other providers have always exchanged confidential patient information in the course of treating patients, conferring with experts and referring or transferring patients to appropriate levels of care. New technology will make this process seamless and more effective, but it brings with it new concerns about privacy and security.

Senate Bill 133 is critically important to the success of electronic health information exchange in Kansas. K-HITE articulates clearly that meeting federally mandated HIPAA privacy and security requirements and standards are the rules by which providers will exchange health information, providing much needed alignment of Kansas laws to the federal standard. This is the standard upon which new federal ARRA HITECH Act requirements are based and will be the national standard going forward. In an environment where electronic records are exchanged nationwide, even worldwide, we must all adhere to a common set of rules. K-HITE also lays out how patient information will be handled and how patients will be informed.

Senate Bill 133 also provides guidance that has been lacking concerning individuals who require assistance in making decisions about their health information – minors, incapacitated adults and deceased individuals. Prior to this bill, no clear guidance has been available to providers about how this can be done even in the paper record environment. KHA applauds the authors in providing this clarification.

Finally, KHA supports K-HITE's language that sets the Kansas Health Information Exchange as the authority approving HIE's in Kansas. Without this approval process, providers have no method to assure that an HIE which seeks their participation or information meets the basic standards required by ARRA or has the appropriate security in place to protect their information.

Again, the Kansas Hospital Association and its members appreciate the opportunity to support the Kansas Health Information and Exchange Act and would be available for questions should you have any.

Health & Human Services
Date: 3-8-11
Attachment: 11

Curtis State Office Building
1000 SW Jackson St., Suite 540
Topeka, KS 66612-1367

Kansas

Phone: 785-296-0461
Fax: 785-368-6388
www.kdheks.gov

Robert Moser, MD, Secretary

Department of Health & Environment

Sam Brownback, Governor

SB 133, Kansas Health Information Technology and Exchange (KHITE) Act

Written Testimony Presented to
Committee on Health and Human Services
By

Robert Moser, MD, Acting Secretary
Department of Health and Environment

March 8, 2011

Chair Landwehr and members of the committee, I am pleased to provide written comments in support of Senate Bill 133, the Kansas Health Information Technology and Exchange (KHITE) Act.

Since 2004, a group of dedicated stakeholders have worked to develop a policy and technology infrastructure plan for the state that would facilitate the secure exchange of health information among providers and patients. In 2009, the Kansas Department of Health and Environment (KDHE), borrowing heavily from earlier efforts, convened a stakeholder group of 33 members called the e-Health Advisory Council (e-HAC). This council was tasked with assisting the state in the creation of the Kansas Health Information Exchange Strategic and Operational Plan (Plan) in response to a grant opportunity provided by the Office of the National Coordinator designed to accelerate health information exchange (HIE) development at the state level.

Two major themes in the Plan are privacy and security issues related to the exchange, and the removal of barriers to participation for both providers and patients. KHITE provides a framework for addressing both of these issues by removing legal barriers to HIE and creating a practical framework for the secure exchange of health information. The substance of SB 133 has been debated and amended a number of times in the last few years by stakeholders in the Kansas HIE discussions. Through the work of the e-Health Advisory Council and its Legal Workgroup, we now have a bill that we believe removes a number of barriers to the meaningful adoption of HIE in the state, that was approved through a consensus process by the e-HAC, and has been forwarded to the Legislature with the support of both the Kansas Health Information Exchange Board of Directors and KDHE.

The e-HAC Legal Workgroup identified five areas that needed to be addressed in order for the KHITE Act to be successful in achieving the goals of stakeholders. The KHITE Act harmonizes Kansas law with the HIPAA Privacy Rule and establishes standards for approving health information organizations (HIOs) in Kansas. Next, it gives patients the right to provide notice and affords them the opportunity to opt out of disclosures to an HIO if they so choose. KHITE creates uniformity in laws regarding the identification of personal representatives for health-related matters and amends the Uniform Electronic Transactions Act to include health-related transactions.

Health & Human Services
Date: 3-8-11
Attachment: 12

The secure exchange of health information is a necessity if we hope to achieve meaningful improvements in coordinated patient care, health care quality, patient safety, and enabled patient responsibility. Through the proper use of HIE we hope to see improvements in these areas resulting in healthier people living longer lives while being better informed than ever before about their personal health care.

Thank you for the opportunity to provide comments on SB 133.

KANSAS ACADEMY OF FAMILY PHYSICIANS
CARING FOR KANSANS

Written Testimony: Senate Bill 133
House Health & Human Services, March 8, 2011
By: Carolyn Gaughan, CAE, Executive Director

Chairman Landwehr and committee members:

Thank you for the opportunity to submit written comments on behalf of the Kansas Academy of Family Physicians supporting **Senate Bill 133**. This is an important bill to align our Kansas laws related to health information with federal HIPAA Privacy and Security Rules. This is particularly important for physicians and other providers using Electronic Health Records (EHRs). The current laws are a significant barrier to the broad use of EHRs and the bill is needed to eliminate the barriers. It supports the technological advancements that will enable secure and appropriate collection, use and exchange of health information. We urge your adoption.

KAFP is supportive of health information exchange (HIE) efforts, particularly those that are targeted to improve quality of care and increase patient safety. HIE can lead to improved patient outcomes.

For these reasons, we urge your adoption of SB 133. Thank you again for the opportunity to provide written comment. Please let me know if you have any questions.

www.kafponline.org

President
Jennifer L Brull MD *Plainville*

President-Elect
Deborah S Clements MD *Kansas City*

Vice President
Christian Cupp MD *Scott City*

Secretary
Mary Beth Miller MD *St Francis*

Treasurer
Todd A Miller MD *Wichita*

Board Chair
Michael L Munger MD *Overland Park*

Delegates
Carol A Johnson MD *Bel Aire*
Robert P Moser Jr MD *Wichita*

Alternate Delegates
Joe D Davison MD *Wichita*
Michael L Kennedy MD *Kansas City*

Directors
John Delzell MD *Kansas City*
Mike Engleken MD *Topeka*
John Feehan MD *Olathe*
Wakon Fowler MD *Pratt*
Rob Freelove MD *Salina*
Doug Gruenbacher MD *Quinter*
Robyn Liu MD MPH *Tribune*
Jennifer Bacani McKenney MD *Fredonia*
Diane Steere MD *Wichita*
Marla Ullom-Minnich MD *Moundridge*

Foundation President
Carol A Johnson MD *Bel Aire*

Resident Voting Representative
Mike Oller, MD *Wichita*

Student Voting Representative
Rachel Seymour *Kansas City*

Executive Director

7570 W. 21st St. N. Bldg. 1046, Suite C | Wichita, KS 67205 | 316.721.9005 | 1.800.658.1749 | Fa

Health & Human Services
Date: 3-8-11
Attachment: 13

KANSAS OPTOMETRIC ASSOCIATION

1266 SW Topeka Blvd. • Topeka, KS 66612
(785) 232-0225 • (785) 232-6151(FAX)
www.kansasoptometric.org

DATE: March 8, 2011

TO: HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

FROM: GARY L. ROBBINS, EXECUTIVE DIRECTOR

RE: S.B. 133

The Kansas Optometric Association wishes to express our strong support of Senate Bill 133, the Kansas Health Information Technology and Exchange Act. S.B. 133 is the result of extensive discussions by health providers, consumer advocates, state agencies, employers, technology vendors and others who share the common goal of improving the quality of health care for Kansans. It will allow interoperable secure exchange of health information to improve the coordination and quality of health care. By allowing health providers to exchange information electronically and have the latest information, it will potentially save lives through more timely treatment, preventing drug interactions, eliminating delays in test results, providing access to previous patient records and improving care in many other ways. In addition to enhancing the quality of care and patient safety, it has the potential to prevent unnecessary costs and achieve savings for the health care delivery system.

S.B. 133 is the cornerstone to allowing health information exchange by removing legal barriers to electronic health information exchange while assuring secure and safe exchange of health information. It requires amending Kansas law to be harmonized with the HIPAA Privacy Rules; establishment of standards for approving health information organizations; provisions for individual notice and the opportunity to opt out of disclosures to a health information organization; adoption of uniform rules regarding the identification of personal representatives for health information; and amending the Uniform Electronic Transactions Act to include health-related transactions.

S.B. 133 is essential to allow Kansas health providers to the opportunity meet "meaningful use" standards for health information technology thus qualifying for federal incentives for health information technology. The Kansas Optometric Association would urge you to act favorably on S.B. 133.

Affiliated with American Optometric Association

Health & Human Services
Date: 3-8-11
Attachment: 14

AARP Kansas
555 S. Kansas Avenue
Suite 201
Topeka, KS 66603

T 1-866-448-3619
F 785-232-8259
TTY 1-877-434-7598
www.aarp.org/ks

February 11, 2011

The Honorable Brenda Landwehr, Chair
Senate Committee on Public Health and Welfare

Reference: SB 133 - Kansas Health Information Technology and Exchange (K-HITE) Act

Good afternoon Madam Chair and Members of the House Health and Human Services Committee. My name is Maren Turner and I am the Senior State Director for AARP Kansas. AARP Kansas represents over 341,000 members from across the state. On behalf of AARP Kansas and its members, I am writing in support of Senate Bill (SB) 133, the Kansas Health Information Technology and Exchange (K-HITE) Act. SB 133 is the product of a long-term collaborative partnership among Kansas stakeholders including health care providers, consumer groups, insurers, state agencies, employers and other interested parties who share the goal of interoperable, secure exchange of health information to improve the coordination, safety and quality of health care for all Kansans.

K-HITE is comprehensive in its scope - the legislation addresses identified legal barriers to health information exchange and creates a practical framework to facilitate the exchange of health information in a safe and secure manner. The K-HITE Act facilitates the rapid adoption of health information technology (HIT) and health information exchange (HIE) through a five-part strategy:

(1) harmonize Kansas law with the HIPAA Privacy Rule;

(2) establish standards for approved health information organizations (HIOs);

(Over)

Health & Human Services
Date: 3-8-11
Attachment: 15

W.
Ad

(3) provide individual notice and opportunity to opt out of disclosures to an HIO;

(4) adopt uniform rules regarding the identification of personal representatives for health-related matters; and

(5) amend the Uniform Electronic Transactions Act to include health-related transactions.

It is our belief that the secure exchange of health information will improve health care quality and safety. Additionally, providers' ability to achieve "meaningful use" of health information technology and thus receive Medicare or Medicaid incentive payments depends in large part on their ability to demonstrate participation in health information exchange.

SB 133 is an imperative step in facilitating the adoption of health information technology and exchange and puts in place the structure for this exchange to occur in a safe, secure manner.

I appreciate the opportunity to provide testimony in support of this bill and urge you to act favorably on SB 133.

Thank you.

Kansas Association of Osteopathic Medicine
1260 SW Topeka Boulevard
Topeka, Kansas 66612
Phone (785) 234 5563
Fax (785) 234 5564

WRITTEN TESTIMONY

House Committee on Health and Human Services
SB 133

The Kansas Association of Osteopathic Medicine (KAOM) is in support of SB 133.

The Kansas Association of Osteopathic Medicine has been participating in a number of work groups over the past few years dealing with health information technology. The exchange of health information via electronic transmission will only increase over the next few years. The exchange of electronic health records and information is a positive step towards improved health care. However, it is not without its risks.

While SB 133 addresses legal barriers, more importantly it addresses the exchange of health information in a safe and secure manner. SB 133 will align Kansas law with the HIPAA Privacy Rule; establish standards for approved health information organizations; provide individual notice and opportunity to opt out of disclosures to Health Information Organizations; adopt uniform rules regarding the identification of personal representatives for health related matters; and amend the Uniform Electronic Transactions Act to include heath-related transactions.

The health care community is rapidly moving towards electronic health records. The ability of health care providers to demonstrate participation in health information exchanges is vital for Kansas health care providers to move forward and achieve "meaningful use" of health information technology.

SB 133 is a necessary step to put in place the structure necessary for the exchange of electronic health information.

KAOM encourages you to vote in favor of SB 133.

Thank you.

Bob Williams, M.S.
KAOM Executive Director

Health & Human Services
Date: 3-8-11
Attachment: 16