

Testimony Submitted by – John Lynch, MPH, March 16, 2012

Subject: S.B. No. 368 - An Act Concerning the Health Information Exchange of Connecticut

Good morning. My name is John Lynch and I am here today as a member of the Board and of the Executive Committee of the Health Information Technology Exchange of Connecticut (HITE-CT), and as chair of their Legal and Policy Committee.

Recommendation: Please oppose this legislation! This legislation would:

- Destroy the currently evolving health information systems,
- Impose barriers to efficient, high quality health care,
- Negatively impact state agencies,
- Defeat the purpose of health information exchange,
- Create undue burden on healthcare providers,
- Require purchase of new or vastly upgraded information systems,
- Increase healthcare costs, and
- Impose significant impediments in the way of developing a robust, sustainable and useful health information exchange throughout Connecticut!

- **Destruction of currently evolving health information systems.** Proposed legislation seeks to control and limit the availability of patient information in the electronic health information systems as defined in section 19a-25d (a){1} of the general statutes including information in electronic health records (EHR), personal health records (PHR), and everyday healthcare transactions such as orders for tests, reporting of lab results, refills of prescriptions, submission of claims to insurance carriers, and reporting of quality outcome metrics.

[section 19a-25d (a){1} "Electronic health information system" means an information processing system, involving both computer hardware and software that deals with the storage, retrieval, sharing and use of health care information, data and knowledge for communication and decision making, and includes: (A) An electronic health record that provides access in real-time to a patient's complete medical record; (B) a personal health record through which an individual, and anyone authorized by such individual, can maintain and manage such individual's health information; (C) computerized order entry technology that permits a health care provider to order diagnostic and treatment services, including prescription drugs electronically; (D) electronic alerts and reminders to health care providers to improve compliance with best practices, promote regular screenings and other preventive practices, and facilitate diagnoses and treatments; (E) error notification procedures that generate a warning if an order is entered that is likely to lead to a significant adverse outcome for a patient; and (F) tools to allow for the collection, analysis and reporting of data on adverse events, near misses, the quality and efficiency of care, patient satisfaction and other healthcare-related performance measures.]

- **Imposition of barriers to efficient, high quality healthcare.** Proposed legislation would effectively kill all healthcare transactions except those defined as an emergency (Sec. 19a-131) or pursuant to a court order.

[Sec. 19a-131. (7) "Public health authority" means a person or entity authorized to respond to a public health emergency in accordance with the plan for emergency responses to a public health emergency prepared in accordance with section 19a-131g, including, but not limited to, licensed health care providers or local and district health directors.]

- **Negative Impact on state agencies:** The Department of Public Health is not the only state agency involved in electronic exchange of health information. Proposed legislation would limit reporting to and from state agencies such as the Department of Consumer Protection (reporting and follow-up re controlled substances), the Department of Social Services (care delivery, claims, reporting), and the department of Mental Health and Addiction Services (care delivery and reporting).

- **Defeats the purpose of health information exchange (HIE):** Everyday Health care workflow involves exchanges of data between hundreds of entities involved in routine patient treatment, payment, and operations. HIPAA recognizes the necessity of these workflows and grants permission for them without patient specific authorization. The proposed legislation is akin to requiring every retail establishment to obtain specific customer signed authorization before forwarding a charge slip or check through the banking system to the patient's bank. Imagine requiring Amazon to require every customer to travel to a physical storefront to provide a signed authorization before processing an order! As with the post office and the banking system, the purpose of health information exchange is to deliver the package to its intended destination without opening and reading the contents of every package transmitted.

- **Creates undue burden on care providers.** Proposed legislation will create a burden on all care providers to obtain additional authorizations for patient information that will be disclosed by their electronic systems that are already HIPAA compliant. Technology is meant to improve efficiency and save costs. Proposed legislation is oblivious to the realities of every day workflow and would require authorization "(1) describing the health information that may be disclosed, (2) describing the potential uses of the patient's health information, including identification of any person or entity to which the patient's health information may be disclosed..." Each health care encounter is unique. When you call a pharmacy to refill your prescription, how would you sign an authorization for the pharmacist to permit transmission of the refill request to a physician? How would the pharmacist know who might process that request in support of the physician to identify any person to which it may be disclosed? How might the pharmacist transmit the patient authorization to the physician to inform the physician that it is OK to electronically complete and return that electronic prescription refill request? Electronic transactions by their nature are not always in person. Proposed legislation would kill all efforts at electronic prescribing. Individual recipients cannot be predetermined. Authorization describing the contents of each release is burdensome. Such process would require an authorization at every encounter. The costs of such systems are enormous.

- **Require purchase or upgrade of every electronic healthcare system.** The proposed law would put in place different workflow/systems for electronic HIE than exist in the current healthcare environment. There are FEW if ANY existing Electronic Health Records (EHR) that are capable of obtaining patient written signature and transmitting authorizations electronically, nor processing thru the EHR and detecting if sensitive data exists. The law would delay EHR, PHR, and HIE for years until vendors respond and put such capabilities in place.

- **Increase health care costs.** There will be substantial unfunded costs required on the part of all stakeholders, including physician practices, healthcare organizations, payers, government agencies and HITE-CT to implement the proposed legislation. From the simple viewpoint of HITE-CT (ignoring the large expense to all other stakeholders), simply creating 3.5 million (one per state resident) authorization forms and educational packets and distributing them to all stakeholders in the state, at \$10 per package, would cost \$35 million. Since no provider has a mechanism to determine if a patient has already signed an authorization elsewhere, and legislation require authorization describing what information, the potential use, and identification of any person to which the information will be disclosed, HITE-CT may have to distribute ten times that volume per year (\$350 million) to account for multiple transactions per patient. HITE-CT does not have a budget to handle such an authorization process. Now imagine the financial impact on each stakeholder! Who will cover their costs?

- **Impose a significant impediment in the way of developing a robust, sustainable and useful HIE exchange in CT.** Public Act 10-117 placed the responsibility for the development of health information exchange statewide in a 20 member legislatively appointed Board of Directors of the quasi-public entity, the Health Information Technology Exchange of Connecticut (HITE-CT). Health care workflows are already complex, with many idiosyncrasies. Such workflows do not lend themselves to micromanagement through legislation. HITE-CT has been working through this process in an open, transparent, and inclusive process. Many stakeholders have participated in ongoing committees including technical infrastructure, finance, business operations, special populations, and legal/policy. In 2011, the legislature created an additional Privacy Advisory Committee reporting to both the HITE_CT Board of Directors and to the legislature. These committees are responsible for monitoring developments concerning patient privacy and security relating to health information technology and setting forth guidance in this area. Though the process does not guarantee that a minority vote will rule, it does allow for all sides to be heard, and board members appointed by the legislature to make their best informed decisions. Please support the continuation of the process you legislatively initiated.

Conclusion: There is no need to change the current law with regard to the electronic exchange of health information. The legislature empowered and entrusted the HITE-CT to develop policies and standards for the exchange of patient records electronically. The HITE-CT Board of Directors urges the Public Health Committee not to support this proposed bill.