

**In Attendance:**

*Task Force Members*

Julie Adams Seton – Ascension Health	N	Carl Ahmed CA (Carl Ahmed) Associates	Y	Archie Alexander Dept. of Health Administration - LSU/Shreveport	N
Norman (Skip) Best Covisint	N	Nestor Cromwell TDSHS	Y	Mirsa Douglass TDSHS	Y
James Gaston HIPAA Solutions, LC	N	Patricia Gray UH Law Center Health Law & Policy Institute	Y	Chris Guerrero TDSHS	Y
William Gross LabCorp	N	Tim Hanson TDSHS	N	Travis Hanson West Texas Health Information Regional Extension Center	N
Charles Harrison ATCIC	Y	Eric Heflin Medicity	Y	Jonathon Ishee Northwest Diagnostic Clinic & Access Health Providers	N
Radhika Iyer Computer Task Group	Y	Sheila Kelster THHSC	N	Diane Kenyon Harden Healthcare	Y
Ann Kitchen Health & Community Strategies	N	Bryan Law Texas House of Representatives	Y	Jon Law Paseo del Norte HIE	N
Peter MacKoul HIPAA Solutions, LC	N	Meg Marshall Cerner	N	Kem McClelland Integrated Care Collaboration	Y
Matthew Murray Texas Medical Association	Y	Robert Myles UT Southwestern	Y	Deborah Peel Patient Privacy Rights	Y
Mark Peppard General Dentist	Y	Christy Rodgers Tenet Healthcare	N	Stanley See TDSHS	Y
Telly Shackelford Sandlot, LLC	N	Camille Schaeffer ICA	Y	Stew Urbach TDSHS	Y
Earnest Valle THHSC	N	LaDair Wright HHSC Medicaid/CHIP	N		
<i>Others Attending</i>					
Ivy Bela THHSC	Y	Andrea Cobb TMA	Y	Jocelyn Dabeau THSA	Y

Tony Gilman THSA	<b>Y</b>	Lillian Prince THSA	<b>Y</b>	Steve Roddy THSA	<b>Y</b>
Merila Walker THHSC	<b>Y</b>				

### Agenda Items

#	Item Name	Item Owner	Time Allotment
1	<b>Welcome, Announcements, Review of Task Force Charter, Agenda Overview</b>	<b>Steve Roddy</b>	<b>10:00–10:10 a.m.</b>
<p><b>Presenter:</b> Steve Roddy (THSA Assoc. Director of Policy and Planning)</p> <ul style="list-style-type: none"> <li>Mr. Roddy called the meeting to order, reminded members that the task force process is intended to be collaborative and invited participation, made announcements regarding meeting participation, inquired whether members had experienced difficulty accessing the task force shared Wiki site and utilizing the Attendance Tracker on the site, and requested that members record attendance using the Attendance Tracker.</li> </ul>			
2	<b>Collaboration Council Report</b>	<b>Steve Roddy</b>	<b>10:10–10:25 a.m.</b>
<p>Presenter: Steve Roddy</p> <p>Presentation and Discussion:</p> <ul style="list-style-type: none"> <li>Mr. Roddy provided a summary of discussion by the THSA Collaboration Council during its meeting on June 10, 2011 relating to the work of the Privacy and Security Task Force.</li> <li>He indicated that Council members representing local health information exchanges (HIEs) had been asked if they had or were contemplating consent policies containing provisions in addition to those included in federal or state law, including related requirements contained in House Bill 300, recently passed by the 82<sup>nd</sup> Legislature. He reported that respondents had indicated that no consensus has emerged but that it is a question that some have considered and may continue to examine as they develop operational plans.</li> <li>Mr. Roddy also mentioned that Council members thought it might be worthwhile for the THSA to draft a model patient notice for providers to use in fulfillment of the HB 300 requirement for provision of notice</li> </ul>			

of electronic disclosure of protected health information (PHI), as well as a model business associate agreement for use by HIEs with their own participants.

- A question was posed as to whether the HB 300 notice requirement could be incorporated into existing notice of privacy practices already required by federal law? Jocelyn Dabeau responded that HB 300 requires “posting” in the provider’s place of business, on its website, or “in any other place where individuals whose PHI is subject to disclosure are likely to see the notice”, such that an actual “posting” of the notice was likely to be required. A question was also raised about the implications of patients’ ability to restrict use of their information. Ms. Dabeau responded that the intent is to develop general notice language indicating that PHI was subject to electronic disclosure, rather than detailing what requirements might exist for patient consent of disclosure of their health information generally. A member inquired about any implications of HB 300 regarding accounting for disclosures, and Ms. Dabeau stated that HB 300 did not directly mention the accounting requirements. Patricia Gray stated that the draft rule for accounting requirements had been promulgated by the U.S. Department of Health and Human Services, and she described the accounting that would be required for electronic disclosure if that rule went into effect in its current form.

*Participants: Steve Roddy, Jocelyn Dabeau, Patricia Gray, Robert Myles*

3	<i>Overview of “Overview and Discussion of Federal and State Legal Framework Relating to Patient Consent and Authorization”</i>	Jocelyn Dabeau	10:25–10:40 a.m.
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**Presenter:** Jocelyn Dabeau (THSA)

**Presentation and Discussion:**

- Mr. Roddy introduced Ms. Dabeau to present a draft summary of the federal and state legal framework relating to patient consent and authorization for disclosure of protected health information, and reminded task force participants that the paper remains in draft form, asking that members not redistribute the paper while it remained in draft form.
- Ms. Dabeau reviewed provisions of HB 300 relating to notice and authorization regarding electronic disclosure of PHI, noting that under Texas’ expanded definition of covered entity, pretty much any entity that stores, transmits or otherwise uses PHI is considered a “covered entity.”
- Ms. Dabeau discussed authorization and consent provisions in federal and state law, as outlined in the draft document, and noted that some types of health information carry with them more stringent requirements than that which is required pursuant to HIPAA. She also noted that state law has provisions for physician-patient confidentiality, and similar confidentiality requirements for other types of providers, and that neither HIPAA nor HB 300 superseded the more stringent state law consent and authorization requirements.

- She posed two questions for further consideration: Are there certain types of PHI that should not be included in a HIE? If so, should we address that at the state level or let individual HIEs decide?
- Eric Heflin stated that the technological ability to do data segmentation was not yet available, given the prevalence of legacy EHR systems without this functionality, as well as the difficulty of segmenting data contained in the free text fields in EHRs.
- Charles Harrison noted that he felt substance abuse information should be available to behavioral health providers. Dr. Murray suggested that this decision should be left up to the individual HIEs.

*Participants: Steve Roddy, Jocelyn Dabeau, Charles Harrison, Matthew Murray, Eric Heflin*  
*“Overview and Discussion of Federal and State Framework Relating to Patient Consent and Authorization” will be posted on the task force shared wiki site for member access as a draft document.*

<b>4</b>	<b>Overview of “<i>Recommendations for Texas Health Information Exchange Trust Agreements</i>”</b>	<b>Steve Roddy</b>	<b>10:40-11:00 a.m.</b>
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**Presenter:** Steve Roddy, Cynthia Marietta, Patricia Gray

**Presentation:**

- Mr. Roddy introduced Cynthia Marietta and Patricia Gray of the University of Houston Health Law & Policy Institute to provide an overview of the draft white paper, “*Recommendations for Texas Health Information Exchange Trust Agreements*”, produced by the Institute under contract with the Texas Health and Human Services Commission (HHSC). He reminded task force participants that the paper remains in draft form and asked that it not be redistributed while still in draft form, noting that it will be posted on the THSA website when finalized.
- Ms. Marietta reviewed the contents of the paper and indicated that a key consideration was whether the federal Data Use and Reciprocal Support Agreement (DURSA) could serve as a basis for development of a model for HIE trust agreements in Texas, noting that the paper’s conclusion was that DURSA could fill that role. A question was raised regarding how much of DURSA might be usable in creating a model trust agreement at the state level? Ms. Marietta estimated that approximately 70-80% of the DURSA contents could be applicable.
- Kem McClelland of ICC expressed concern about the potential complexity of trust agreements and the need to keep them simple and readable to ensure physician willingness to participate. Ms. Dabeau clarified that the trust agreement Ms. Marietta referred to was the agreement that would be put into place between the THSA and the Local HIE grant recipients, and that ICC and other HIEs would have separate agreements with their own participants.

- Further discussion also took place regarding the need to ensure that data segmentation, if supported in Texas HIE, is appropriately supported in trust agreements between parties to information exchange. Concerns were raised and discussed regarding the feasibility of segmentation; whether, if pursued at any point, it should be supported at the state or local level; implications of segmentation regarding unstructured data and ancillary data uses beyond treatment, including research; and the ability of consumers to understand and fully utilize opportunities to actively control access to their PHI.
- Ms. Marietta indicated that a model trust agreement between THSA and the Local HIEs would set out the Texas privacy and security legal framework and that policy questions about use of such agreement would need to be resolved, including: Should the agreement provide for indemnification? Should there be a structure of monetary penalties for violations? How does 'Texas' expanded definition of covered entity factor into what needs to be included in the agreement? What entity should have oversight responsibilities?

*Participants: Steve Roddy, Cynthia Marietta, Patricia Gray, Eric Heflin, Kim McClelland, Jocelyn Dabeau, Matthew Murray*  
*"Recommendations for Texas Health Information Exchange Trust Agreements" has been posted on the task force shared wiki site for member access as a draft document.*

<b>5</b>	<b>Future Meetings and Agenda Items; Other Items; Adjournment</b>	<b>Steve Roddy</b>	<b>11:00 – 11:03 a.m.</b>
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**Presenter:** Steve Roddy

**Discussion:**

- Mr. Roddy reminded members that the task force's next meeting is scheduled for July 27 and expressed intent to continue review of the federal and state legal framework relating to consent and authorization and the elements of a model trust agreement for Texas HIE, and to take up discussion of a white paper being developed by the University of Houston Health Law and Policy Institute regarding security issues.
- He asked if there were any other items members needed to discuss. There being none, the meeting was adjourned.