

THINC, Inc.

Taconic Health Information Network and Community

Privacy and Consumer Affairs Committee Meeting September 24, 2009 11:00AM-12:00Noon

A meeting of the Privacy and Consumer Committee of the THINC, Inc, a New York not-for-profit corporation (the "Corporation"), was held on September 24, 2009.

Committee Members Present:

Arthur Levin, Committee Chair, Harriet Fritz, Norma Johnson, Roxanne Parrella, Steve Sarg

Non-Committee Members Present:

A. John Blair, III MD, Dianne Koval, Helen Pfister, Allison Laquidara, Susan Stuard

I. APPROVAL OF JUNE and JULY 2009 MEETING MINUTES

The motion was made, seconded to approve the meeting minutes for the June and July 2009 meetings.

II. DISCUSSION OF PATIENT CONSENT POLICY

Previously, the committee discussed the policy with the exception of section five, "Special Provisions Relating to Minors". Version 3 of the Patient Consent Policy was distributed to the committee requesting feedback. Susan Stuard took the comments made by committee members and incorporated them into the document. Susan Stuard graciously thanked members of the committee for taking the time to review the policy off line, as well as for their comments and edits. Again, comments from the committee were incorporated into the document and Version 4 was sent to the committee prior to the September 24, 2009 meeting for review.

- **EXCEPTIONS TO THE AFFIRMATIVE CONSENT REQUIREMENT**

Currently, Section 2 reads, "affirmative patient consent is not required for one-to-one exchange of a patient's Personal Health Information" (PHI). One-to-one exchange is a disclosure of PHI by one of the patient's providers to another provider treating the patient with the patient's knowledge and implicit or explicit consent. This one-to-one or point to point exchange is an electronic transfer of information that is understood and predictable to a patient, such as a referral to a specialist, a discharge summary sent to where the patient is transferred or discharged, or lab results sent to the practitioner who ordered them". Concern was expressed about the use of language for "one to one". The group felt that the "one to one" terminology implies that the PHI would be from sent from one physician to one physician, noting that in most cases the "one to one" exchange would include multiple physicians. The group agreed to add explicating language that would explain clearly the intent of the "one to one" exchange but would continue to track the language used in the state adopted policy and accepted definition from NYS DOH (which includes sending one report to multiple treating physicians if required).

- **BREAK-THE-GLASS**

Affirmative patient consent is not required for a break-the-glass scenario when treating a patient with an emergency condition. The THINC health information exchange would maintain a record of access related to break-the-glass and have the ability to audit such access. In addition, THINC would ensure that the break-the-glass access is terminated after the emergency treatment. It was noted, if there is no record of consent, then the break-the-glass can occur; however, if there is consent with

the organization and the patient has affirmatively denied consent, then according to state policy even in a medical emergency, the denial of consent applies.

- **SPECIAL PROVISIONS RELATED TO MINORS**

In New York State, a minor may provide his or her own consent for certain types of health services without a parent's or guardian's permission, such as family planning, HIV testing, mental health or substance abuse treatment. Because it is difficult to identify information related to health services provided relevant to minor consent from other information about the minor, THINC and its participants cannot reasonably be sure whether the minor or the parent/guardian is the individual authorized to provide consent for exchange of PHI. With that risk in mind, THINC and its participants are choosing not to permit exchange information about minors age eleven and above for exchanges of patient information that require patient consent.

A final draft of the policy will be distributed to the committee for a final review. At the next committee meeting the group will begin the discussion on audit. The meeting was adjourned at 12:06pm.