

MYTH: There is a broad, federal regulatory structure that governs the creation and activities of a Health Information Exchange (HIE).**FACT: While some state-level laws affecting HIEs are beginning to appear, there is no broad federal law or regulation addressing the creation and activities of HIEs. Federal action in this area consists of voluntary frameworks, strategies, and guidance.**

Today's HIE landscape is a much different picture than a mere 10 years ago, due in no small part to several federal incentives and programs that were designed to "stand-up" regional Health Information Exchange (HIE) entities. The idea is that regional HIEs will soon connect with one-another to create a nation-wide HIE network, thereby allowing information to follow patients in a safe and secure manner to any care setting at any time. But contrary to popular belief, Congress has not passed any laws, and the White House has not written any regulations, that control the creation and operation of HIEs. Federal policy in this area favors the organic development of health information exchange among willing providers, albeit a policy laden with incentives to jump on board.

To be sure, there have been significant legal moves to enable and incentivize the development of HIEs, but none of the following actions supporting HIEs requires their creation or dictates their operation:

- A 2004 Executive Order established the Office of the National Coordinator of Health Information Technology, charged with implementing a national and interoperable HIT infrastructure.
- The Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH) created the Meaningful Use program to provide monetary incentives in Medicare and Medicaid for providers to adopt EHRs (which are necessary for HIEs to work).
- The Patient Protection and Affordable Care Act of 2010 (ACA) set forth dozens of programs aimed at payment reform leading to new models

of care such as Accountable Care Organizations and Medical Homes, all of which require HIT.

Along the way, the federal government has established committees, held hundreds of stakeholder meetings, issued grants for HIE establishment, and drafted several "plans" to help guide the process in a voluntary way. In 2004, the first HIT strategy document was published, titled "The Decade of Health Information Technology: Delivering Consumer-Centric and Information-Rich Health Care Framework for Strategic Action." After a few interim updates, 2013 saw the release of "Governance Framework for Trusted Electronic Health Information Exchange."

Therefore, while it is certainly the case that the federal government is playing a vital role in the creation and operation of HIEs across the nation, there is no overarching governance model of what an HIE has to be, at least at the federal level. It appears that the federal government's role, at least into the near future, will be limited to the facilitation of standard-setting, certification of EHR products and services, and the administration of the financial incentives for EHR adoption through the Meaningful Use program. States, on the other hand, are beginning to craft state laws directed at the operation of HIEs. But these laws are rare, and to date primarily focus on extending state privacy laws to HIE operations.

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