

Making technology work

MiHIN Governance Work Group

• February 2, 2010



Today's Objectives

- Narrow the options for governance model structure (public utility versus not for profit) based on what will be governed, roles and what will work in Michigan for the MiHIN



Governance Model – Decisions already made

- **The State will not be the governance entity**
- **By 12/31**
 - Entity established and operating
 - Board named and in place
 - Pilots selected
- **There will be one entity that will operate and govern the MiHIN which will be empowered to make decisions – this decision lends itself best toward a public utility or not for-profit model**
- **MiHIN governance will not be a for-profit entity**



Public Utility Model vs Not for Profit

Public Utility

- A general definition of a public utility is a business organization (such as an electric company) performing a public service or providing an essential commodity or service that is subject to special governmental regulation
- HIEs would be maintained with the assistance of state funds and would be provided with direction by the state government
- 'Unchartered territory' for statewide HIE

Not for Profit

- The not-for-profit HIEs are generally driven by their charter to help the patients and the community in which they provide services
- Their tax-exempt status can help to reduce funding challenges and provide special tax credits/incentives i.e. no federal corp. tax, contributions are tax deductible, property tax exemption
- Dominant model for statewide HIE



Other states – types of governance entities

AZ AzHeC	CA CalRHIO Board of Directors	CO CORHIO Pre-Board Steering Committee	CT eHealth Connecticut	DE	HI	
NFP	501 (c) (3)	501 (c) (3)	NFP	State entity	NFP	
IN 2 Organizations IHIE Board of Directors 2)INPC Managemen t	MD	MA MHDC Board of Directors	ME HealthInfo Board of Directors	MN	NY	NE
IHIE: 501 (c) (3) INPC: virtual	State	501 (c) (3) MA-SHARE is a sole member LLC subsidiary of MHDC)	501 (c) (3)	NFP	501 (c) (3)	NFP 2008, applying for 501 (c) (3) status
NC	RI RIQI Board of Directors	TN Governor's eHealth Advisory Council	UT UHIN	VT	WI	
501 (c) (3)	501 (c) (3)	Advisory council	501 (c) (6)	501 (c) (3)	Board of advisors	



Comparison – Key Differences

	Public Utility	Not for Profit
How established	<ul style="list-style-type: none"> Act of legislation or executive order 	<ul style="list-style-type: none"> File application with state Request tax exempt status from IRS
Role of government	<ul style="list-style-type: none"> Direct 	<ul style="list-style-type: none"> Less direct – designed as a public-private collaboration
Protection of public interest	<ul style="list-style-type: none"> Stronger 	<ul style="list-style-type: none"> Potential for conflict between public interest and the NFP interest, although can be mitigated through regulation or bylaws/mission
Time to set up	<ul style="list-style-type: none"> More difficult to form – would likely require investment from State Government 	<ul style="list-style-type: none"> 1-2 months to incorporate Additional time for IRS tax exemption status, however can begin operations without this status



Comparison – Key Differences

	Public Utility	Not for Profit
Flexibility to address market situations	<ul style="list-style-type: none"> Less flexible May require legislation to change 	<ul style="list-style-type: none"> More flexible
Degree of business risk	<ul style="list-style-type: none"> State can step in if it fails 	<ul style="list-style-type: none"> Business case strongest for clinical messaging – other aspects part of ‘proof of concept’ Must find funding for sustainability
Susceptibility to political change	<ul style="list-style-type: none"> More susceptible 	<ul style="list-style-type: none"> Less susceptible
Experience with HIE	<ul style="list-style-type: none"> Not utilized in any other State Breaking new ground with new, untested model could add complexity to MiHIN implementation 	<ul style="list-style-type: none"> Most statewide HIE Governance entities are not for profit, 501 (c) (3) models



Governance Structure: Tax Status Options Matrix

	501(c)(3) Government Grants Foundation Grants	501(c)(4) May be slightly less attractive May require additional safeguards, but permissible	501(c)(6) Less likely Difficult, but can be structured to permit with substantial administrative/accounting efforts by grantors and grantees
Funding	User Fees Membership Fees	User Fees Membership Fees	User Fees Membership Fees -- redemption/distribution abilities may enhance revenue opportunities
Transfer of incubator funds without FMV payment	Easily accomplished	Can be accomplished if “purposes consistent” and carries out 501(c)(3) purpose of transferor	Possible, but requires creation of restricted charitable trust fund with attendant administrative and procedural safeguards
Lobbying/advocacy	Most restricted	Few restrictions	Even less restricted
Operational flexibility	Tax/nonprofit issues may complicate some potential operations	Tax/nonprofit issues may complicate some potential operations	Fewer restrictions
Executive Compensation	Restrictions apply; high level of scrutiny	Restrictions apply; high level of scrutiny	Some additional flexibility
Conflicts of interest standards	Strict standards	Strict standards	Business corporation standards – less restrictive



Source: <http://www.calrhio.org/?crdx=503>



Governance Model – Decisions to be made next

- **Decisions related to establishing governance**

- Formation
- Board
- Contracting
- Flow of funds

