



Wisconsin State-Level Health Information Exchange Planning and Design Project

Business Options Analysis and Recommendations

February 15, 2010



Revision History

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1 INTRODUCTION

1.1 Project Background

Governor Jim Doyle issued Executive Order 129 that called for the creation of a Wisconsin Action Plan for Health Care Quality and Safety (eHealth Action Plan) as a response to controlling increasing health care costs and to address the call for widespread adoption of interoperable electronic health records (EHRs). As part of the Executive Order, the Governor requested that a Board for eHealth Care Quality and Safety (eHealth Board) be established to oversee the development of the eHealth Action Plan. The intent of the eHealth Action Plan was to provide recommended actions and associated milestones to achieve the goals set forth in the Executive Order¹:

- Ensuring health information is available at the point of care for all patients
- Reducing medical errors and avoiding duplicative medical procedures
- Improving coordination of care between hospitals, physicians, and other health professionals
- Furthering health care research
- Providing consumers with their health information to encourage greater participation in their health care decisions

The Board was further directed to assess the current technology environment, identify health information needs, assess technical options, foster adoption of EHR standards to facilitate exchange of health information, and recommend a structure for governing HIE state-wide. The eHealth Board published their recommendations as part of the eHealth Action Plan in 2006.

As an extension to the work conducted by the eHealth Board, the Wisconsin Department of Health Services (DHS) initiated work with Deloitte Consulting on a crucial project to plan and design a State-Level Health Information Exchange (SLHIE). State-level refers to collective, collaborative efforts involving public and private sectors to advance HIE involving:

- Planning and state-wide implementation
- Governance, technology, policy, HIE services, and business model/financing
- Addressing unique needs and characteristics of Wisconsin's state-wide landscape
- Coordinating negotiated, consensus-based solutions for HIE implementation
- Supporting state-wide health and health care improvement

The goals of the Wisconsin SLHIE Planning and Design Project are to design the core enabling functions of the SLHIE, encompassing governance, technical and patient care services, financing, and the technical architecture. The first phase of the project involves generating recommendations for a designated state-level entity, with broad stakeholder representation, designed to assume a distinct SLHIE governance role. Phase One activities include:

- Conducting an environmental scan and stakeholder assessment to understand capabilities, interests, and HIE needs
- Identifying high-priority services to be provided by a SLHIE in Wisconsin

¹ Wis. Exec. Order No. 129 (Nov. 2, 2005), http://www.wisgov.state.wi.us/journal_media_detail.asp?locid=19&prid=1499.



- Developing a high-level inventory of existing assets in Wisconsin that may be leveraged to support HIE (Note: the detailed asset inventory is to be completed in Phase Two)
- Identifying and analyzing business options for Wisconsin's SLHIE governing entity—including the presentation of a recommendation

Phase Two will focus on technology-related activities and will result in recommendations for technical plans, reference architecture, and a detailed implementation roadmap. Phase Two activities include:

- Institutionalizing a state-wide HIE Operating Model (e.g., governance, legal entity, organizational structure, stakeholder input mechanisms)
- Completion of the detailed asset inventory
- Defining and designing a state-wide HIE technical architecture
- Identifying stakeholder-level value propositions
- Developing HIE use cases
- Designing a sustainable financial/business model for the SLHIE
- Defining a HIE business and technical migration plan
- Conducting education and outreach with stakeholders

1.2 Objective

This **Business Architecture Options Analysis and Recommendations** document is designed to integrate the cumulative findings from the Aggregated Stakeholder Asset Data Summary and Service Prioritization efforts; the outcome of the Stakeholder Assessment and Environmental Scan; and analyses of similar state-level efforts throughout the country to outline a recommended business architecture for Wisconsin's future SLHIE governance entity. Although this effort is an interim step in the planning process, it is an important one. This recommended business architecture will serve multiple purposes:

- Establishing a basis for responding to Office of the National Coordinator's (ONC's) Cooperative Agreement Program (CAP) Funding Opportunity Announcement (FOA) governance domain requirement that requests states to "...describe the multi-disciplinary, multi-stakeholder governance entity including a description of the membership, decision-making authority, and governance model"
- Providing input into state legislation that may be required to establish the entity
- Defining initial services and functions to be provided by Wisconsin's SLHIE governance entity²
- Establishing the foundational elements of governance necessary for subsequent SLHIE planning and design efforts based on stakeholder priorities, ONC's requirements, and Wisconsin's current environment

² As was identified during the Aggregated Stakeholder Asset Data Summary and Service Prioritization efforts, there is an expectation that the services and functions that Wisconsin's SLHIE governance entity will provide will evolve as HIE efforts progress. For further details, please refer to <http://dhs.wisconsin.gov/ehealth/SLHIE/index.htm>



1.3 Scope

As noted previously, the business architecture options analysis and recommendations effort is based on governance-related information gathered from multiples sources both within and external to the State of Wisconsin. The remainder of this report presents the findings of the assessment in four sections: (1) a governance options analysis, (2) an operating model assessment, (3) a SLHIE operating framework, and (4) the governance implementation roadmap and timeline as represented in the following figure.

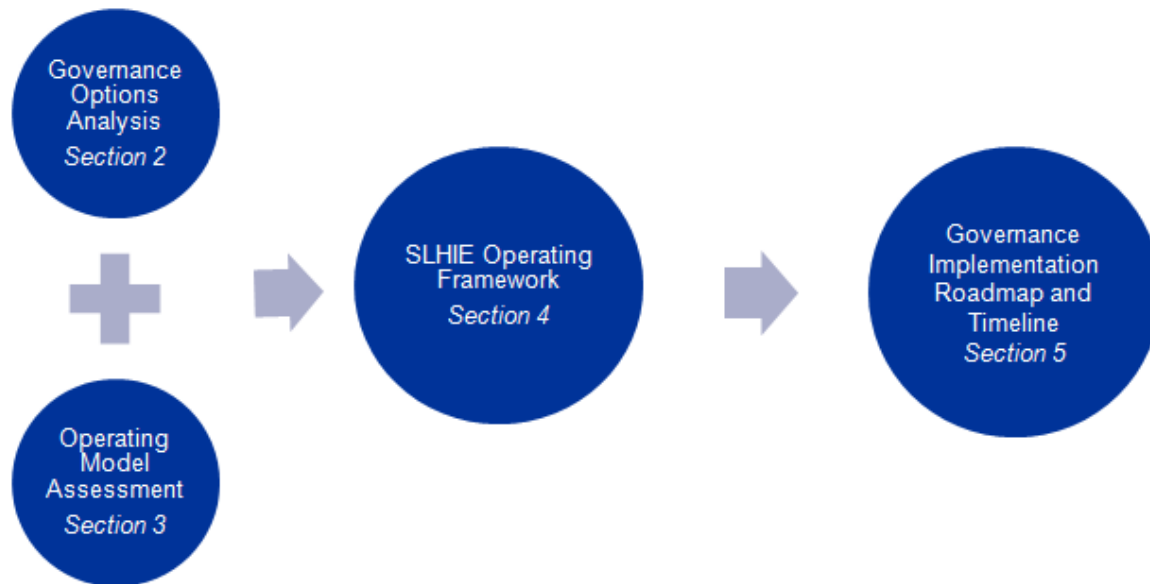


Figure 1. Framework for business options analysis

Section 2 – The **Governance Options Assessment** describes options and a recommendation for the SLHIE governance entity’s legal structure, and the rationale associated with the recommended option.

Section 3 – The **Operating Model Assessment** presents: (1) possible operating models and associated functions the SLHIE governance entity may perform and services it may provide; (2) the recommended model for the Wisconsin SLHIE governance entity; and (3) the rationale for selecting the recommended operating model. The models are provided as a framework for the future, recognizing that the operating model will evolve over time.

Section 4 – The **SLHIE Operating Model Framework** defines the governance entity’s guiding principles, structure, and responsibilities; the State Designated Entity’s (SDE’s) organizational structure, roles and responsibilities; and the operational start-up costs associated with the recommended governance option. It provides recommendations on the composition of a SLHIE governing board, the process to select board members, the establishment of standing committees of the board, and the permanent staffing needs of the SLHIE governance entity (i.e., the SDE).

Section 5 – The **Governance Implementation Roadmap and Timeline** outlines the roadmap and the timeline for the planning, establishment, and implementation/operations activities that need to be completed to create and operationalize the SLHIE governing board, its committees, and the SDE.



1.4 Acronyms

ARRA	American Recovery and Reinvestment Act of 2009
CAP	Cooperative Agreement Program
DHS	Department of Health Services (State of Wisconsin)
DED	Deliverable Expectation Document
EHR	Electronic Health Record
FOA	Funding Opportunity Announcement
HHS	Health and Human Services
HIE	Health Information Exchange
HIT	Health Information Technology
IRC	Internal Revenue Code
IRS	Internal Revenue Service
MTA	Medical Trading Area
MU	Meaningful Use
NeHC	National eHealth Collaborative
NGA	National Governors' Association
ONC	Office of the National Coordinator for Health Information Technology
SDE	State Designated Entity
SLHIE	State-Level Health Information Exchange
SWOT	Strengths, weaknesses, opportunities, and threats
WCHQ	Wisconsin Collaborative for Healthcare Quality
WI	Wisconsin
WHIE	Wisconsin Health Information Exchange

1.5 References

This Business Architecture Options and Recommendations deliverable uses the following sources of information to develop the business options and recommendations:

- Lessons learned by and leading practices of other states



- Wisconsin eHealth Action Plan
- Wisconsin SLHIE Stakeholder Assessment and Environmental Scan deliverable
- Wisconsin SLHIE Aggregated Stakeholder Asset Data Summary and Service Prioritization deliverable
- eHealth Care Quality and Patient Safety Board – Governance Workgroup, Final Report dated November 22, 2006
- National Governors’ Association State Alliance for eHealth:
- SL-HIE Consensus Project’s “State Health Information Exchange (SHIE) Toolkit”
- SL-HIE Consensus Project’s “State Level Health Information Exchange: Roles in Ensuring Governance and Advancing Interoperability”
- ONC’s State Health Information Exchange Cooperative Agreement Program Funding Opportunity Announcement
- Wis. Exec. Order No. 129 (Nov. 2, 2005)
- Wisconsin team’s work product developed during the 2009 State Alliance for eHealth 2nd Annual State Learning Forum

1.6 Assumptions and Exclusions

The following assumptions were made in the development of this deliverable.

- Detailed business service modelling, costs assessments, benefit assessments, and business case development activities will be completed during development of the State HIE CAP strategic and operational plans.
- Evaluation of technical architecture-related activities, options, recommendations, and costs associated with technical design and implementation will be completed during development of the State HIE CAP strategic and operational plans.
- The recommended operating model for the SLHIE governance entity is preliminary and will evolve when detailed analysis of Wisconsin’s existing HIE-related assets and the technical planning and design for state-wide HIE is completed during development of the State HIE CAP strategic and operational plans. A complete Strength-Weaknesses-Opportunities-Threats (SWOT) analysis for the planned business and technical service offerings and architecture will be completed in the next phase of SLHIE planning and design.
- Requirements set forth in the ARRA application for the governance domain are addressed in this deliverable, such as describing a collaborative governance model with a multi-disciplinary, multi-stakeholder governance entity, the SLHIE governance entity’s reporting responsibilities, describing how the SLHIE will address HIE accountability and transparency to Wisconsin stakeholders and State government, and describing how the State HIT Coordinator will interact with HIE activities within Wisconsin.

2 GOVERNANCE OPTIONS ASSESSMENT

In response to Executive Order 129, the eHealth Board initiated work to generate recommendations pertaining to the creation of organizational and governance structures for a state-wide HIE infrastructure. These recommendations were to be included as part of Wisconsin’s eHealth Action Plan. In 2006, the eHealth Board tasked its Governance Workgroup with developing the recommendations to be included as part of the Plan. The Governance Workgroup identified ten recommendations focusing on the future structure of the governance entity. Items that were to be further assessed were the governance model and the legal structure associated with the governance entity.



The Deloitte Consulting Team further expanded upon the efforts previously conducted by the Governance Workgroup to evaluate various governance model options in order to determine the model that is most appropriate for Wisconsin.

2.1 Governance Model Input Sources

The SLHIE Consensus Project recommends establishing a strong governance structure, with clearly defined roles and functions, as a critical step during the initial planning activities to promote state-wide HIE.³ As part of the Wisconsin SLHIE Planning and Design efforts, our team consulted a number of sources to gather input into the governance design including:

- Guidance and recommendations provided by ONC's State HIE CAP FOA
- Information collected from work conducted by the Wisconsin eHealth Care Quality and Patient Safety Board Workgroups, the SL-HIE Consensus Project⁴, and the National Governors' Association State Alliance for eHealth governance models adopted by other states
- Input from Wisconsin's public, private, and consumer health care stakeholder groups

Our team evaluated input from the various sources in order to understand lessons-learned from other states, Wisconsin's stakeholders' motivations/needs, and other Wisconsin-environmental factors (e.g., population, geographic layout) that would ultimately shape our recommendation.

2.1.1 Wisconsin-specific Input

2.1.1.1 Stakeholder Input

To understand the specific motivations/needs of Wisconsin's stakeholders relating to how HIE should be governed state-wide, the SLHIE Planning and Design Project Team collected feedback through multiple sources, including HIE Regional Summit Meetings, the HIE Capabilities Survey, and stakeholder interviews.

- **HIE Regional Summit Meetings.** A portion of the Summits' time was used to obtain feedback on the stakeholders' views around governance. The Summits were designed to encourage stakeholders to express opinions around the types of functions that the SLHIE governance entity should provide, what factors should be considered in selecting the entity that is best positioned to govern, characteristics of the individuals that should participate on a board, and the general makeup of the board (i.e., size and representation). The SLHIE Planning and Design Project captured both written and verbal feedback.
- **HIE Capabilities Survey.** In addition to the Summits, all stakeholders were provided with the opportunity to further share their opinions through an online survey. The HIE Capabilities Survey captured stakeholders' opinions about the preferred governance model in addition to members who should be represented on the Board. A more detailed synopsis and results from the summit meetings and survey are captured in the Stakeholder Assessment and Environmental Scan report.
- **Stakeholder Interviews.** As part of the Stakeholder Assessment and Environmental Scan activities, the Wisconsin SLHIE Planning and Design Project conducted interviews with

³ "SHIE Toolkit," 29 Jan. 2010 <http://statehieresources.org>.

⁴ The SL-HIE Consensus Project is a project conducted by American Health Information Management Association (AHIMA) and the AHIMA Foundation under contract with the Office of the National Coordinator for Health Information Technology.



SLHIE Project Steering Committee (“Steering Committee”) members, Wisconsin State government agencies/departments, and DHS-identified private organizations involved in Wisconsin’s HIE-related initiatives to solicit input on governance, services, functions, and financial considerations associated with a state-wide HIE in Wisconsin.

Across all feedback forums, a number of common themes arose around the topic of governance. Stakeholders identified the following as critical to successfully governing state-wide HIE in Wisconsin:

- Broad representation of stakeholders required as part of a governing board, standing committee, and ad hoc committees
- Flexibility/agility in structure to allow for evolution of HIE state-wide
- Establishment of trust among stakeholder groups
- Involvement of State government as a participant rather than leading HIE efforts
- Independence from political influence
- Ability to raise funds to address short-term capital needs and long-term financing
- Ability to identify and acquire skilled expertise (e.g., technical, financial, and legal)
- Board members must be trustworthy, knowledgeable, and work collaboratively

2.1.2 External Input

2.1.2.1 National Governors’ Association State Alliance for eHealth

A recent study conducted by the University of Massachusetts Medical School’s Center for Health Policy and Research evaluated the different roles state governments play in providing oversight or regulatory functions for a cross-section of industries including health care. The study also examined the current HIE marketplace, as well as the common characteristics of different types of governance models. The findings, published in the Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry,⁵ identified three common models for overseeing state-wide HIE. The table below highlights the common characteristics of each model identified in the study.

Governance Type	Selection Criteria / Common Characteristics
Government-Led Electronic HIE	<ul style="list-style-type: none"> • Advanced IT infrastructure already exists (i.e., ease of scalability) • May introduce challenges with ongoing sustainability • Requires government to broker buy-in and establish trust • Government provides technical services as well as governance-related services • Accountability is enforced through legislation, executive orders, rules, or contracts with third parties that are providing services
Electronic HIE Public Utility with Strong Government Oversight	<ul style="list-style-type: none"> • Existence of limited coordination among HIE efforts • Significant progress made in private sector to expand HIE capacity • Government regulates and oversees the HIE industry by setting policies, coordinating with private-sector HIE efforts through consensus building activities, and monitoring and addressing inappropriate industry behavior • Accountability is enforced through legislation, executive orders, rules, or contracts with third parties that are providing services
Private Sector-Led HIE with Government Collaboration	<ul style="list-style-type: none"> • Mature HIE efforts in private sector organizations • Buy-in is achieved between private sector HIE efforts and its

⁵ University of Massachusetts Medical School Center for Health Policy and Research. “Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry” (2009).



Governance Type	Selection Criteria / Common Characteristics
	stakeholders <ul style="list-style-type: none"> • Private sector governs the HIE industry • State government acts as a stakeholder • Reliance on state funding often leads to conflict of interest for state government participation on the governing board

Table 1. Common characteristics associated with public governance models.

The NGA identifies these models as “...a starting point for states to consider viable oversight strategies based on the level of regulatory control state governments wish to exert over the electronic HIE industry,⁶” rather than a finite list of governance models.

2.1.2.2 Office of the National Coordinator Cooperative Agreement Program Funding Opportunity Announcement Requirements

During the Phase One of the project, the federal government released a Funding Opportunity Announcement, authorized by the HITECH Act, providing states and State Designated Entities with an opportunity to apply for federal funding to support their state-level HIE efforts through the State Health Information Exchange Cooperative Agreement Program. The Program was created to improve and expand HIE services across the health care stakeholder community in order to improve the quality of health care as well as increase efficiencies in the delivery of health care services.

According to the ONC’s State HIE CAP FOA, entities that are eligible to apply for federal funding, and thereby serve as the governing entity, may either be a component of state government or a not-for-profit entity. If states opt to designate an entity to serve as the governing body, the ONC specifies that a qualified state designated entity shall “...be a not-for-profit entity with broad stakeholder representation on its governing board.” ONC also provides guidance to applicants regarding the common public and private governance models as described in the NGA’s Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry.

Beyond the entity requirements, ONC identified nineteen requirements across five domains by which states will be assessed in the first two years of implementation to determine HIE progress. The table below details each requirement.

ONC SLHIE Requirements	
1	Establish a governance structure that achieves broad-based stakeholder collaboration with transparency, buy-in and trust.
2	Set goals, objectives and performance measures for the exchange of health information that reflect consensus among the health care stakeholder groups and that accomplish state-wide coverage of all providers for HIE requirements related to meaningful use criteria to be established by the Secretary through the rulemaking process.
3	Ensure the coordination, integration, and alignment of efforts with Medicaid and public health programs through efforts of the State Health IT Coordinators.
4	Establish mechanisms to provide oversight and accountability of HIE to protect the public interest.
5	Account for the flexibility needed to align with emerging nationwide HIE governance that will be specified in future program guidance.

⁶ University of Massachusetts Medical School Center for Health Policy and Research. “Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry” (2009).



ONC SLHIE Requirements

- 6 Develop the capability to effectively manage funding necessary to implement the State Strategic Plan. This capability should include establishing financial policies and implementing procedures to monitor spending and provide appropriate financial controls.
- 7 Develop a path to sustainability including a business plan with feasible public/private financing mechanisms for ongoing information exchange among health care providers and with those offering services for patient engagement and information access.
- 8 Develop or facilitate the creation of a state-wide technical infrastructure that supports state-wide HIE. While states may prioritize among these HIE services according to its needs, HIE services to be developed include:
 - Electronic eligibility and claims transactions
 - Electronic prescribing and refill requests
 - Electronic clinical laboratory ordering and results delivery
 - Electronic public health reporting (i.e., immunizations, notifiable laboratory results)
 - Quality reporting
 - Prescription fill status and/or medication fill history
 - Clinical summary exchange for care coordination and patient engagement
- 9 Leverage existing regional and state level efforts and resources that can advance HIE, such as master patient indexes, health information organizations (HIOs), and the Medicaid Management Information System (MMIS).
- 10 Develop or facilitate the creation and use of shared directories and technical services, as applicable for the State's approach for state-wide HIE. Directories may include but are not limited to: Providers (e.g., with practice location(s), specialties, health plan participation, disciplinary actions, etc), Laboratory Service Providers, Radiology Service Providers, Health Plans (e.g., with contact and claim submission information, required laboratory or diagnostic imaging service providers, etc.). Shared Services may include but are not limited to: Patient Matching, Provider Authentication, Consent Management, Secure Routing, Advance Directives and Messaging.
- 11 Provide technical assistance to HIOs and others developing HIE capacity within the state.
- 12 Coordinate and align efforts to meet Medicaid and public health requirements for HIE and evolving meaningful use criteria.
- 13 Monitor and plan for remediation of actual performance of HIE throughout the state.
- 14 Document how the HIE efforts within the state are enabling meaningful use.
- 15 Identify and harmonize the federal and state legal and policy requirements that enable appropriate health information exchange services that will be developed in the first two years.
- 16 Establish a state-wide policy framework that allows incremental development of HIE policies over time, enables appropriate, inter-organizational health information exchange, and meets other state policy requirements such as those related to public health and vulnerable populations.
- 17 Implement enforcement mechanisms that ensure those implementing and maintaining health information exchange services have appropriate safeguards in place and adhere to legal and policy requirements that protect health information, thus engendering trust among HIE participants.
- 18 Minimize obstacles in data sharing agreements, through, for example, developing accommodations to share risk and liability of HIE operations fairly among all trading partners.
- 19 Ensure policies and legal agreements needed to guide technical services prioritized by the State or SDE are implemented and evaluated as a part of annual program evaluation.

Table 2. ONC SLHIE Requirements to be met in the first 2 years.

While all requirements must be met in the first two years, some governance models are better positioned than others to fulfill the requirements. A detailed analysis of each model's ability to meet the ONC requirements is described in *Section 2.3.2 ONC Criteria*.



2.1.2.3 SL-HIE Consensus Project

As states are in various stages of progress with respect to establishing HIE capacity state-wide, the American Health Information Management Association (AHIMA) tasked the SL-HIE Consensus Project with analyzing state-level HIE efforts across the country. As part of this effort, the SL-HIE Consensus Project conducted a scan of states to identify governance considerations, recorded the governance model adopted by each state as of 2008 and each state’s planning and operations progress. The results of the scan are reflected in the figure below.

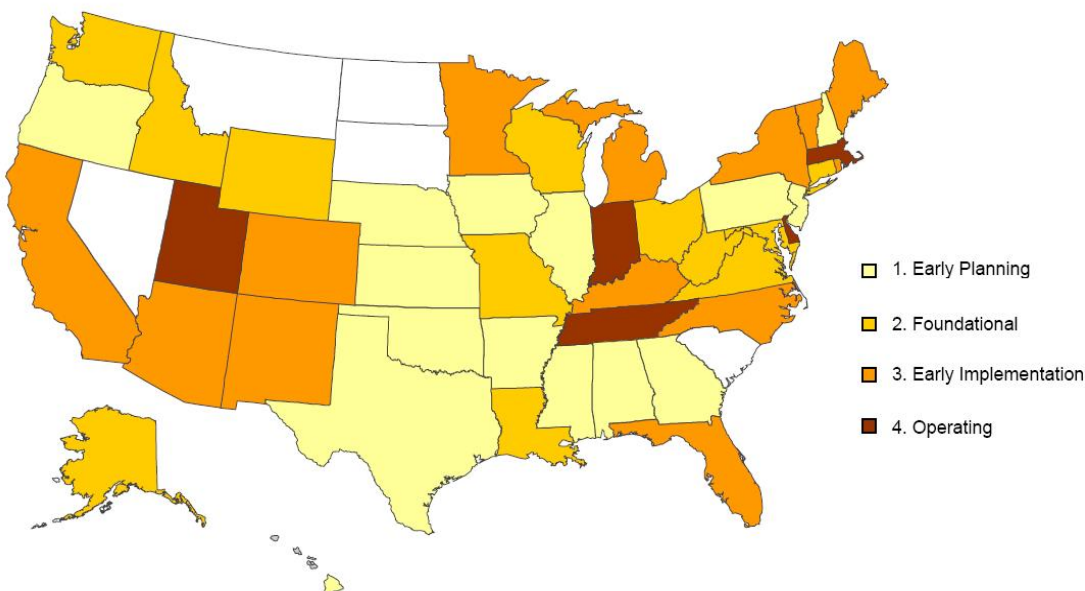


Figure 2. Stage of planning and operations for states in 2008.

Of the states beyond the initial “early planning stages,” a majority of the governance entities are advisory boards or public-private partnerships (PPP). State government-led models account for ~14% of the states sampled.

Governance Type	Number of States
Advisory Body or Board	7
Government, Agency, or Government Council	6
Public-Private Partnership	17
PPP within State Government	1
Not Provided	3
Total	34

Table 3. Number of states by governance type.

The SL-HIE Consensus Project identified three organizational models that are most often adopted by states in their Final Report on State-Level HIE: Governance and Interoperability: (1) state government-led public-private partnership; (2) independent public-private partnership



(focused solely on governance functions); and (3) independent public-private partnership (focused on governance and technical functions).⁷

Of the states surveyed by the SL-HIE Consensus Project, the majority cited an independent non-governmental public-private partnership as "...the most effective and desirable."⁸ Of the 15 states surveyed, 10 identified themselves as having adopted an independent public-private partnership model, 3 states indicated that they were currently state-led but would be moving to an independent public-private partnership model, while the remaining 2 states indicated that they would maintain a state government-led model. The table below represents the results of the survey.

State	State Government-Led Collaboration (Focused on <i>governance</i> or <i>technical operations</i>)	Independent Public-Private Partnership (Focused on <i>governance</i>)	Independent Public-Private Partnership (Focused on <i>governance</i> and <i>technical operations</i>)
Florida	○ →	→	
Kentucky	○		
Louisiana	○ →	→	
Tennessee	●		
Washington	○ →	→	
Massachusetts		●	
Michigan		○	
New York		○	
Arizona			○
California			○
Colorado			○
Indiana			●
Maine			○
Rhode Island			○
Utah			●

Legend ● indicates state-level HIE is currently operating as designed
 ○ indicates state-level HIE is at a "foundational stage" or in "early implementation"
 → indicates state-level HIE plans to migrate to a different organizational model

Figure 3. Governance Models adopted by State-Level HIEs.

2.2 Governance Model Options

Wisconsin’s options for state-level HIE governance are informed by a number of inputs, including:

⁷ SL-HIE Consensus Project, "State Level Health Information Exchange: Roles in Ensuring Governance and Advancing Interoperability," March 2008, 29 Jan. 2010 <http://slhie.org/wp-content/uploads/2009/12/FinalReportPart1.8.pdf>.

⁸ SL-HIE Consensus Project, "State Level Health Information Exchange: Roles in Ensuring Governance and Advancing Interoperability," March 2008, 29 Jan. 2010 <http://slhie.org/wp-content/uploads/2009/12/FinalReportPart1.8.pdf>.



- Stakeholder feedback
- Governance models adopted by other states
- Guidance from the SL-HIE Consensus Project
- ONC’s State HIE CAP FOA

Based on these inputs, our report considers three types of governance models structured for Wisconsin’s SLHIE governance entity. To allow for consistency in governance model terminology, a mapping of the governance options terms is provided in the table below.

Governance Option	NGA Term
State Government-Led	Government-Led Electronic HIE
Public Utility	Electronic HIE Public Utility with Strong Government Oversight
Independent Public-Private Partnership	Private-Sector-Led Electronic HIE with Government Collaboration

Table 4. Mapping to NGA governance terminology.

The terms listed in the governance option column will be used throughout subsequent sections of this report. The following sections describe each of the three governance models.

2.2.1 State Government-Led

A state government-led model is one in which a state agency/department is responsible for leading the efforts associated with expanding HIE capacity state-wide. According to the NGA’s Report to the State Alliance for e-Health, states should consider the state government-led model under the following circumstances⁹:

- Minimal state-wide or regional HIE efforts exist
- Limited vendors in the marketplace
- Scalable, advanced HIE infrastructure exists

The NGA’s Report to the State Alliance for eHealth also indicates that state government-led models are often more adept at addressing liability concerns, and in some cases, may be more successful at building consensus, as the competitive landscape has been removed. However, state government-led models are often susceptible to changes in the political landscape, including changes to agency and funding priorities.

2.2.1.1 State Government Role in State Government-Led Model

State government assumes the lead role in the state government-led governance model. Responsibilities of government will vary depending on the operating model selected. As cited in the Report to the State Alliance for e-Health, state governments may be responsible for the following functions as part of the state government-led model¹⁰:

⁹ University of Massachusetts Medical School Center for Health Policy and Research. “Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry” (2009).

¹⁰ University of Massachusetts Medical School Center for Health Policy and Research. “Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry” (2009).



- *Consensus and trust building activities* – In states within no or little progress toward state-wide HIE, state government plays an important role in developing trust among stakeholders through open forums and the creation of specific policies and procedures
- *Technical architecture* – In states with no or little progress toward infrastructure-related activities, state government is responsible for deciding if existing assets will be leveraged or new assets created, as well as for making any decisions related to the procurement of technical services
- *Implementation of technical services* – State government is responsible for the selection of technical services (both patient/population health and shared-utility)¹¹
- *Standards* – State government is responsible for the creation of standards and ensuring standards are consistent with national, interstate, and intrastate standards
- *Data agreements* – State government is responsible for the creation of data agreements outlining data sharing and use agreements
- *Finance* – State government is responsible for providing funding for the state-wide HIE, through revenue streams or a sustainable business model

2.2.2 Public Utility

A public utility model involves state government oversight of a private-led effort for state-wide HIE. According to the Report to the State Alliance for e-Health, this approach may be suitable under the following circumstances¹²:

- Limited coordination between the existing private-sector initiatives
- Unproven capabilities of the existing initiatives

A public utility model allows for oversight within state government but is hindered by the same disadvantages of the state government model, while minimizing collaboration with the private health sector.

2.2.2.1 State Government Role in a Public Utility

While state government does have a significant role in a public utility, its responsibilities are less than those of the government-led model, as the private sector is responsible for the selection of the technical architecture. The Report to the State Alliance for e-Health outlined the following responsibilities for state government in a Public Utility model¹³:

- *Consensus and trust building activities* – State government plays an important role in developing trust among stakeholders through open forums and the creation of specific policies and procedures
- *Technical and Policy Standards* – State government is responsible for the creation of interoperability standards

¹¹ States may opt to contract technical services to a third party. In instances where states contract with a third party, the state is responsible for ensuring that the vendor is held accountable for meeting its obligations. This is most often accomplished through a contract.

¹² University of Massachusetts Medical School Center for Health Policy and Research. “Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry” (2009).

¹³ University of Massachusetts Medical School Center for Health Policy and Research. “Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry” (2009).



- *Data agreements* – State government is responsible for the creation of data sharing and use agreements
- *Business Models* – State government may need to provide funding for the state-wide HIE
- *State Coordination* – State government is responsible for coordinating efforts across state government agencies
- *Regulation* – State government must monitor and regulate the industry

2.2.3 Independent Public-Private Partnership

The independent public-private partnership model is led by the private sector with state government participation. According to the Report to the State Alliance for e-Health, this model is recommended when the following conditions exist¹⁴:

- Mature and well-structured private sector efforts
- Existing data agreements for shared/technical services and technical architectures
- Strong consensus among stakeholders

An independent public-private partnership model is more conducive for building consensus and securing financial support than other models. The SL-HIE Consensus Project defines the benefits of an independent public-private partnership in their report, “Realizing State-level HIE Value and Sustainability” as having¹⁵:

- Ability to bring expertise and required staff
- Procurement process efficiencies
- Balanced inputs to ensure sustainability
- Insulation from political changes
- Ability to more easily secure matching funds

2.2.3.1 State Government Role in an Independent Public-Private Partnership

While not directly responsible for the independent public-private partnership, state government still plays a crucial role in the following activities:

- *Oversight and governance* – State government provides support for oversight and governance of the PPP, including the representation from all key stakeholders (including state government)
- *Technical and Policy Standards* – State government is responsible for the creation of interoperability standards
- *Data agreements* – State government is responsible for the creation of data sharing and use agreements
- *Financial* – State government can provide financial assistance or incentives for HIE-related activities
- *Regulation* – State government may monitor and regulate the industry

¹⁴ University of Massachusetts Medical School Center for Health Policy and Research. “Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry” (2009).

¹⁵ SLHIE Consensus Project, “Realizing State-Level HIE Value and Sustainability” (2009)



- *State Coordination* – State government is responsible for coordinating efforts across state government agencies
- *Market failures* – State government is responsible for developing strategies to address HIE market failure

2.3 Governance Model Options Assessment

In order to determine the most appropriate governance model for Wisconsin, the SLHIE Planning and Design Project Team evaluated input from Wisconsin stakeholders, ONC criteria and advantages and disadvantages cited in the SL-HIE Consensus Project. This section of the deliverable provides the summary of our analysis.

2.3.1 Wisconsin Stakeholder Input

As part of the Stakeholder and Environmental Scan activities, our team performed a detailed stakeholder survey designed to understand stakeholder’s motivations around governance, financing, HIE services to be provided, and circumstances that would hinder them from participating in a SLHIE in Wisconsin. As part of surveying efforts, stakeholders were asked to identify the governance model that best describes the “optimal model” for a SLHIE governance entity in Wisconsin. 47% of respondents selected the public-private model, followed by 38% for the public utility model, and 15% for the government-led option. More detailed information from the HIE Capabilities Survey can be found in the August 2009 Stakeholder Assessment and Environmental Scan report. Stakeholders participating in the HIE Regional Summit meetings were asked to identify “who would be best suited to govern state-wide HIE in Wisconsin” or “who would you be most comfortable with managing your health information?” The following table lists the considerations that Summit participants evaluated as well as their responses as to how each entity is positioned to meet the governance need.

47% of Summit respondents selected the public-private model, followed by 38% for the public utility model, and 15% for the government-led option.

Governance Needs	State-Government Led	Non-profit State Designated Entity
Broad Representation of Stakeholders	2	3
Ability to serve as a trust broker	2	3
Independence from political influence	1	3
Ability to raise funds	1	3
Leadership continuity and stability	1	3
Ability to hire and acquire needed expertise	1	3
Immunity to budgetary priorities	1	3
Efficiency of procurement process	1	3

1: Least Positioned 2: Moderately Positioned 3: Best Positioned

Table 5. Stakeholder views of different entities’ abilities to address governance needs.

While respondents were not specifically asked if they would prefer a public utility or independent public-private partnership governance model, they were asked if they preferred a state-government led model to a state designated entity model. The state designated entity model was defined as either a not-for-profit government controlled entity or a not-for-profit private sector controlled entity with government collaboration. Stakeholders indicated that they favored a state designated entity (89% of respondents) over state government leading the state-wide HIE (11%).



2.3.2 ONC Criteria

As noted previously, the ONC identified nineteen requirements associated with each of the five domains detailed in the FOA by which states will be assessed within the first two years of implementing the State CAP. The assessment is intended to determine states' progress toward advancing HIE capacity state-wide.

The table below details each requirement and our assessment of the governance model with which it is most closely aligned. Our assessment is based on our analysis of the NGA's State Alliance for eHealth Report, feedback from Wisconsin stakeholders, reports from the SLHIE Consensus Project, and our professional judgment



ONC Criteria	State Government	Public Utility	Independent Public-Private Partnership	Rationale	
Governance					
1	Establish a governance structure that achieves broad-based stakeholder collaboration with transparency, buy-in and trust.	2	2	3	While all of the models could achieve broad-based stakeholder collaboration with transparency, not all would achieve buy-in and trust. Wisconsin stakeholders indicated that the model they believed to support buy-in and trust to be a non-government controlled model.
2	Set goals, objectives and performance measures for the exchange of health information that reflect consensus among the health care stakeholder groups and that accomplish state-wide coverage of all providers for HIE requirements related to meaningful use criteria to be established by the Secretary through the rulemaking process.	3	3	3	All models would equally be able to satisfy this requirement.
3	Ensure the coordination, integration, and alignment of efforts with Medicaid and public health programs through efforts of the State Health IT Coordinators.	3	2	2	As the Medicaid and public health programs fall under the purview of state government, the state government-led model is best suited to meet this requirement. Other models are capable, but are not part of their inherent structure.
4	Establish mechanisms to provide oversight and accountability of HIE to protect the public interest.	3	2	2	With the state-government led and public utility models, state government has a significant oversight role and may establish accountability through legislation, rules, executive orders, etc. In a public-private partnership accountability is often enforced through contracts. Contracts often involve penalties/damages to be paid by a third party that may increase the level of accountability over the other two models that may only require reports to be provided to the legislature.
5	Account for the flexibility needed to align with emerging nationwide HIE governance that will be specified in future program guidance.	1	1	3	An independent public-private partnership is best suited to address future changes that may require modifications to be made swiftly as it is not subject to bureaucratic processes associated with rule making.
Finance					
6	Develop the capability to effectively manage funding necessary	2	2	3	An independent public-private partnership has a



ONC Criteria	State Government	Public Utility	Independent Public-Private Partnership	Rationale
to implement the state Strategic Plan. This capability should include establishing financial policies and implementing procedures to monitor spending and provide appropriate financial controls.				greater ability to develop revenue generation products/services than the other models. .
7 Develop a path to sustainability including a business plan with feasible public/private financing mechanisms for ongoing information exchange among health care providers and with those offering services for patient engagement and information access.	1	2	3	The NGA recognizes that ongoing sustainability may be most problematic for state government if there is a heavy reliance on state funds. While public utilities do have bonding authority, it has been cited as a challenge in that public utilities often incur significant debt.
Technical Infrastructure				
8 Develop or facilitate the creation of a state-wide technical infrastructure that supports state-wide HIE. While states may prioritize among these HIE services according to its needs, HIE services to be developed include: <ul style="list-style-type: none"> • Electronic eligibility and claims transactions • Electronic prescribing and refill requests • Electronic clinical laboratory ordering and results delivery • Electronic public health reporting (i.e., immunizations, notifiable laboratory results) • Quality reporting • Prescription fill status and/or medication fill history • Clinical summary exchange for care coordination and patient engagement 	1	2	3	Independent public-private partnerships have greater access to resources that have the skills necessary to develop or facilitate that creation of state-wide technical infrastructure. Furthermore, they are not required to follow state government procurement rules and may be able to more swiftly procure technical services.
9 Leverage existing regional and state level efforts and resources that can advance HIE, such as master patient indexes, health information organizations (HIOs), and the Medicaid Management Information System (MMIS).	3	3	3	All models would equally be able to satisfy this requirement.
10 Develop or facilitate the creation and use of shared directories and technical services, as applicable for the state's approach for state-wide HIE. Directories may include but are not limited to: Providers (e.g., with practice location(s), specialties, health plan participation, disciplinary actions, etc), Laboratory Service Providers, Radiology Service Providers, Health Plans (e.g.,	1	2	3	Independent public-private partnerships have greater access to resources that have the skills necessary to develop or facilitate that creation of state-wide technical infrastructure. Furthermore, they are not required to follow state government procurement rules and may be able to more



ONC Criteria	State Government	Public Utility	Independent Public-Private Partnership	Rationale
with contact and claim submission information, required laboratory or diagnostic imaging service providers, etc.). Shared Services may include but are not limited to: Patient Matching, Provider Authentication, Consent Management, Secure Routing, Advance Directives and Messaging.				swiftly procure technical services.
Business and Technical Operations				
11 Provide technical assistance to HIOs and others developing HIE capacity within the state.	1	2	3	Independent public-private partnerships have greater access to resources that have the skills necessary to develop or facilitate that creation of state-wide technical infrastructure.
12 Coordinate and align efforts to meet Medicaid and public health requirements for HIE and evolving meaningful use criteria.	3	2	2	As the Medicaid and public health programs fall under the purview of state government, the state government-led model is best suited to meet this requirement. Other models can address coordination through agreements with the state agencies, as well as engaging the State HIT Coordinator.
13 Monitor and plan for remediation of actual performance of HIE throughout the state.	3	3	3	All models would equally be able to satisfy this requirement.
14 Document how the HIE efforts within the state are enabling meaningful use.	3	3	3	All models would equally be able to satisfy this requirement.
Legal/Policy				
15 Identify and harmonize the federal and state legal and policy requirements that enable appropriate health information exchange services that will be developed in the first two years.	3	3	3	All models would equally be able to satisfy this requirement.
16 Establish a state-wide policy framework that allows incremental development of HIE policies over time, enables appropriate, inter-organizational health information exchange, and meets other state policy requirements such as those related to public health and vulnerable populations.	3	3	3	All models would equally be able to satisfy this requirement.
17 Implement enforcement mechanisms that ensure those implementing and maintaining health information exchange services have appropriate safeguards in place and adhere to legal and policy requirements that protect health information,	3	2	2	While all models would be able to satisfy this requirement, state-government led models provide statutory authority to create and enforce legal and policy requirements



ONC Criteria	State Government	Public Utility	Independent Public-Private Partnership	Rationale
thus engendering trust among HIE participants.				
18 Minimize obstacles in data sharing agreements, through, for example, developing accommodations to share risk and liability of HIE operations fairly among all trading partners.	2	3	3	While a number of existing HIOs in Wisconsin have made progress in developing and implementation data sharing agreements between user groups, all models are equally adept at meeting this requirement as the requirement needs to be met within two years of the start of implementation activities. On an ongoing basis, the independent public-private partnership would be best suited to minimize new obstacles due to their flexibility and ability to more quickly respond to and resolve issues.
19 Ensure policies and legal agreements needed to guide technical services prioritized by the state or SDE are implemented and evaluated as a part of annual program evaluation.	2	3	3	All models would equally be able to satisfy this requirement.

1: Least Positioned 2: Moderately Positioned 3: Best Positioned

Table 6. ONC SLHIE Requirements for the first 2 years.



In reviewing the alignment of ONC’s nineteen requirements to the three potential governance models, the independent public-private partnership model aligns with more requirements than the other two models. The independent public-private partnership model differentiates itself from the other models by its agile/flexible structure, its ability to serve as a trust broker, as well as to access and secure skilled resources more quickly than the other models. The only requirement the independent public-private partnership model does not address directly is the requisite coordination with Medicaid and Public Health. By having Medicaid and Public Health act as a participant of the independent public-private partnership, the requirement can be met.

2.3.3 SL-HIE Consensus Project Scan

As noted previously, the SL-HIE Consensus Project produced the findings of its 2007 study of roles that ensure governance and support interoperability of state-level HIE efforts. The cumulative findings of the report have been consolidated into a toolkit, the State Health Information Exchange (SHIE) Toolkit,¹⁶ and made available to states to guide them in their planning and design efforts. To aid states in their decisions around which governance model to adopt, the SHIE Toolkit provides a comparison of the three models identified by the NGA’s Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry: state government-led, “public utility,” and the independent non-profit HIE with government collaboration (independent public-private partnership). The following table summarizes the guidance provided in the SHIE Toolkit.

Governance Model	Advantages	Disadvantages
State Government-Led	<ul style="list-style-type: none"> • May help small states or those states with limited ability to leverage investments from the stakeholders across the health sector • Potential to use existing state government infrastructure, resources, and privacy policies to implement services • Option to avoid issues among multiple private sector HIOs with unresolved competitive challenges, concerns about multiple entities managing health record data, liability issues • Potential for more ready access to public financing options 	<ul style="list-style-type: none"> • Economic and state budgetary constraints can potentially derail HIE development efforts and weaken resource supports for effective state-wide governance activities • Political influences may impede the multi-sector, multi-stakeholder coordination and collaboration required as part of effective state-wide HIE governance • Slow political and public agency processes may impede levels of flexibility required as governance structure and HIE development needs evolve, especially in response to changes in health care policy at the federal and state levels • State Government control and agency processes may inhibit procurements, and private sector investments and innovations related to the adaptation of new HIE
Public Utility	<ul style="list-style-type: none"> • Takes advantage of an HIO entity with expertise and “social capital” among diverse stakeholders to develop and operate HIE • Allows the use of private capital to finance activities 	<ul style="list-style-type: none"> • Political processes and timelines must be navigated to establish formal government requirements. This may impede the speed with which state-wide HIE governance and operations can be

¹⁶ “SHIE Toolkit,” 29 Jan. 2010 <http://statehieresources.org/the-toolkit/governance/governance-overview/#Establishing%20a%20State-wide%20HIE%20Governance%20Structure>.



Governance Model	Advantages	Disadvantages
	<ul style="list-style-type: none"> • Takes advantage of potential government economic regulatory functions to leverage performance, establish rewards and finance system upgrades 	<p>established</p> <ul style="list-style-type: none"> • Private sector will and capital must be mobilized to assure adequate investments in a sustainable and effective HIE organizational infrastructure • State government must provide adequate ongoing oversight and be prepared to intercede if private sector organizational capacity were to fail
<p>Independent Public-Private Partnership</p>	<ul style="list-style-type: none"> • Builds upon established relationships and stakeholder investments in states where established multi-stakeholder HIE organizations are active and successful • Perceived as a desirable option over more direct state government in circumstances where state government is highly constrained in its ability to respond quickly and most effectively, especially given economic constraints, and where state government is typically does not provide these type functions. • Distance from direct government involvement may foster more robust private sector inputs as part of collaborative approaches. • Promotes flexibility and responsiveness to foster negotiated approaches to HIE innovations across both private and public sectors and to respond to the rapidly evolving context for nationwide HIE Interoperability 	<ul style="list-style-type: none"> • Oversight provisions are less formal and robust, relying on the effectiveness of the state-wide HIE governance entity in fostering compliance with sound HIE practices across the state-wide landscape of efforts. (Evidence of the effectiveness of strong self-regulation in other industries is not consistent.) • If a state government contributes to funding for the non-profit HIE entity, procurement requirements and conflict of interest provisions may impact agency representatives from fully participating in the governance decision-making processes • Should the HIE fail after receiving public investments the government’s role is unclear • Under a governance model requiring negotiated consensus without contractual or regulatory requirements, political and/or competitive issues may arise and compromise support for a state-wide HIE governance entity. Competing pressures or organizations and lack of robust participation by stakeholders may potentially degrade the financial viability of the state-wide HIE organization and business model, as well as complicate oversight • Success of this model is highly dependent on an HIE governance entity achieving a level of operational maturity to facilitate HIE development to meet State HIE Program and other Interoperability requirements

Table 7. Advantages and disadvantages of governance models.

The findings presented by the SL-HIE Consensus project align with the views expressed by Wisconsin stakeholders as well as the NGA’s Report. As noted in the table above, each model brings its own distinct advantages and disadvantages. The areas of trust, agility, accountability, influence from politics, and financing are main considerations for Wisconsin stakeholders across all stakeholder types.



Given the views of Wisconsin stakeholders, the state government-led model is least appealing. In reviewing the public utility model the primary areas of concern are the entity's ability to be agile, and that the entity is considered a public entity. In the independent public-private partnership model the primary concern is accountability.

The findings presented by the SL-HIE Consensus project align with the views expressed by Wisconsin stakeholders as well as the NGA's Report.

As the SL-HIE Consensus project indicates without proper contractual or regulatory requirements, the independent public-private partnership is susceptible to political and competitive issues. The primary difference in accountability is the level of oversight involvement from state government. Wisconsin stakeholders loudly expressed their voice by stating that they did not want heavy oversight by state government.

2.3.4 Recommended Governance Option

Based on the analysis of models that have been successfully adopted in other states, ONC's State CAP FOA requirements, Wisconsin stakeholder input, and the current state of HIE efforts across Wisconsin (e.g., local Health Information Organization (HIO) successes), the governance option that is most appropriate for Wisconsin is an independent public-private partnership.

The factors that influenced our recommendation include the following:

- *Neutrality and independence* – An independent PPP is perceived as independent and neutral by stakeholders, since it is separate from state government. If stakeholders do not perceive that an entity is neutral and independent it could jeopardize their participation in the HIE. Neutrality and independence is a key attribute that Wisconsin stakeholders seek in SLHIE governance
- *Insulated from potential changes in administration* – An independent PPP will not be influenced by changes in administration as with a state government-led model. A PPP is immune to changes in political priorities that often result from changes in administration
- *Leadership continuity and stability* – An independent PPP retains consistent leadership regardless of changes to administration
- *Balanced governance* – All models allow for solicitation of representation from diverse stakeholders. However, a state government-led model may be more heavily weighted toward government participation than private sector participation
- *Buy-in from stakeholders* – Wisconsin stakeholders overwhelming support the PPP governance option and indicated they are not in favor of government control or excessive regulation
- *Insulated from potential changes in State budget priorities* – An independent PPP will not be influenced by changes to the State budget as its business model is not as dependent on state funding
- *Efficient procurement processes* – An independent PPP does not need to follow the competitive procurement process of state government. Given the accelerated timeframe

“[I favor a] public-private [partnership], since Wisconsin has a long history of great health outcomes largely driven by private health plans it is important to involve the private sector. Government on the other hand, would be helpful in facilitating the program.”

- Anonymous stakeholder
Appleton Regional Summit



for HIE planning and implementation, a PPP may be better-suited to procure technical vendors, as necessary

- *Ability to hire staff and acquire needed expertise more easily* – An independent PPP is immune to hiring freezes and furloughs often encountered by government-controlled efforts
- *Experiences of Wisconsin’s existing HIOs* – Wisconsin has a number of successful HIOs (e.g., WHIE, WHIO, and WCHQ) that are independent PPPs. All organizations operate separately from Wisconsin state government, while still collaborating with state government.
- *Ability to serve as a trust broker* – As acknowledged by Wisconsin stakeholders, an independent PPP is able to establish trust with stakeholders more easily than a government- controlled/influenced effort
- *Ability to raise funds* – An independent PPP has the ability to secure funds from outside of State budgets that are often influenced by state priorities and economic environments

The creation of the PPP is further discussed in Sections 4 and 5, with further discussion of the legal structure options and analysis below.

2.4 Legal Structure Input Sources

As the governance model provides the framework in which the governance entity will operate, the legal structure provides the specific boundaries under which the governance entity will function. While there are a number of legal structures that are recognized as viable options for a state-level HIE governance entity, the structures examined below are based on the recommendation of an independent public-private partnership model detailed in the previous section.

2.4.1 External Input

During our review of external sources of information pertaining to HIE legal structure, we found a limited number of information sources that could be relied on for this analysis. The challenge lies in the fact that the terminology used across different organizations, reports and states varies. As an example, in the NGA’s Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry, the University of Massachusetts Medical School Center for Health Policy and Research (CHPR) uses public utility and public authority at times interchangeably. States also have different terminology for recognizing a public utility or public authority referring to them as public body corporate, instrumentality, and politics or quasi-governmental entity. Non-profit corporations are a little easier to identify; however, the State of California recognizes “hybrid” quasi-governmental, non-profit corporations as non-profit public benefit or mutual benefit corporations¹⁷.

As noted in *Section 2.1.2.3 SL-HIE Consensus Project*, the overwhelming majority of states responded that their state-level entity was a public-private partnership (not within state government). Our team analyzed a sampling of states to identify the legal structure of their organization¹⁸. The figure below provides reflects information collected from the SL-HIE Consensus Project.

¹⁷ Secretary of State, Business Programs Division, “Organization of California Nonprofit, Nonstock Corporations,” 29 Jan. 2010 http://www.sos.ca.gov/business/corp/pdf/articles/corp_artsnp.pdf.

¹⁸ Note: As states have not submitted their strategic plans to the ONC to communicate the entity that will govern HIE in their state, information was gathered from data that was defined in state statute, available on agency/organization websites, or by direct reach out to the organization.



State	State Government-Led Collaboration (Focused on <i>governance</i> or <i>technical operations</i>)	Independent Public-Private Partnership (Focused on <i>governance</i>)	Independent Public-Private Partnership (Focused on <i>governance</i> and <i>technical operations</i>)
Florida	○ →	→	
Kentucky	○		
Louisiana	○ →	→	
Tennessee	●		
Washington	○ →	→	
Massachusetts		●	
Michigan		○	
New York		○	
Arizona			○
California			○
Colorado			○
Indiana			●
Maine			○
Rhode Island			○
Utah			●

Legend ● indicates state-level HIE is currently operating as designed
 ○ indicates state-level HIE is at a "foundational stage" or in "early implementation"
 → indicates state-level HIE plans to migrate to a different organizational model

Figure 4. Governance Models adopted by State-Level HIEs.

Of the states presented in the table above that have denoted their state-level HIE is either structured as an independent public-private partnership or intends to move to an independent public-private partnership model, the following have identified the legal structure to be of a non-profit corporation:

- Colorado
- Indiana
- Utah
- Rhode Island
- Maine
- Michigan

A number of states are in the process of identifying the legal structure of their governance entity:

- California – California is in the process for contracting with a State Designated Entity (SDE). The RFI issued by the State of California to identify potential candidates to serve as the SDE required that the entity be a non-profit corporation.
- Arizona – While Arizona’s Office of Economic Recovery served as the applicant and intends to receive the ARRA funding for the ONC’s CAP FOA, Arizona Health eConnection, a non-profit independent public-private entity, has been identified by the State to serve as the convener and coordinator of state-level HIE.
- New York – While some sources refer to New York’s state-level HIE effort as following a public utility model, others designate it as a private-led effort with state collaboration. New York has identified NYeC, a non-profit corporation, as leading its state-level HIE efforts.



- Washington – Washington’s legal structure most closely aligns with a public authority model; however, recent legislation in Washington required the Washington State Health Care Authority to designate a private corporation to serve as the lead HIE organization in the State.

2.4.1.1 Non-Profit Corporation

When applying for a 501(c)(3) non-profit corporation, the entity must meet certain requirements set forth by the IRS. According to Section 501(c)(3) of the Internal Revenue Code (IRC), in order to be considered tax exempt, an entity can be created and operated for the purpose of lessening the burden of government. The NGA’s Report to the State Alliance for Health notes that non-profit governance entities need to monitor their compliance with IRC exemption criteria as the services they may introduce could generate revenues that may change their tax status. The entity is also subject to limitations on the amount of political and lobbying activities in which it participates.

2.4.1.2 Public Authority

There are cases for and against public authorities in numerous research journals. Public authorities were originally created to provide a public service that often requires some level of regulation. The NGA’s Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry identifies that public authorities differ from other structures in “...that the entity remains a public actor and is thus subject to due process, public records, and other types of public obligations.”¹⁹

As not all public authorities are created the same in every state, the advantages and disadvantages of a public authority vary based on the explicit legislation creating a particular authority. Critics for and against public authorities have argued about the insulation of the authority from political influences and the ability to generate trust. In New York recent reform legislation was created to address some of these challenges by²⁰:

- Establishing the creation of an independent Authorities Budget Office to oversee authority operations
- Strengthening the rules governing the disposal of property by public authorities to prevent the give-away of public property to private developers
- Strengthening the rules governing contact between lobbyists and employees of public authorities
- Requiring board members of a public authority to perform their duties in good faith, in the best interest of the authority, its mission and the public in order to ensure that public authorities act responsibly
- Creating a Whistleblower Access and Assistance Program to protect those individuals who report wrongdoing

¹⁹ University of Massachusetts Medical School Center for Health Policy and Research. “Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry” (2009).

²⁰ the Gov Monitor, “New York Agrees on Public Authorities Reform Legislation,” November 19, 2009, 29 Jan. 2010 http://thegovmonitor.com/world_news/united_states/new-york-agrees-on-public-authorities-reform-legislation-15823.html.



Public authorities across the nation have also come under scrutiny for their histories of incurring significant debt. Most recently in New York State, the government has implemented reform legislation to address the following²¹:

- Mandate enhanced financial reporting, mission statements and measurement reports by public authorities, so that the State and the public know what authorities are doing, as well as their financial condition
- Regulate the formation of subsidiary corporations and the issuance of debt by subsidiaries in order to place limits on the amount of debt issued by those corporations

New York has also implemented additional legislation to impose tighter restrictions through the Public Authority and Accountability Act of 2005.²²

While legislation may also stipulate that public authorities may be exempt from extensive state procurement processes, New York has also include language in its reform legislation to require that certain noncompetitive bids that exceed \$1 million in value be reviewed by the State Comptroller.²³

To address some of the challenges associated with recruiting skilled resources, the legislation that creates the authority may specify that the public authority be exempt from state civil service and labor requirements.

2.4.2 Wisconsin Input

2.4.2.1 Wisconsin Statute

Non-Profit Corporation

Chapter 181 of the Wisconsin Statutes details the definitions and requirements of a non-stock corporation. According to Chapter 181, a non-stock corporation, means a corporation that does not make distributions, except as authorized under s. 181.1302 (1), (2) and (3).²⁴ To become recognized as a non-profit 501(c)(3) corporation, the entity must file an application with the IRS. Wisconsin recognizes the entity as a non-stock corporation if the entity files as for a 501(c)(3) tax status. Having a 501(c)(3) status may allow non-stock corporations to receive certain tax benefits under Wisconsin law, as well as reduce the burden on non-profit corporations on raising funds. The manner in which non-profit corporation board members appointments are made have no direct involvement by government, rather board members are often designated through an election.

Functions that are required by the SDE and delineated in the statute include the ability to make contracts, incur liabilities, borrow money, issue notes, bonds and other obligations. According to Wis. Stat. § 19.31-19.39, non-profits are subject to Wisconsin's Public Record Law if more than 50% of its funds from a county or a municipality. Wis. Stat. § 19.81-19.98 identifies the

²¹ the Gov Monitor, "New York Agrees on Public Authorities Reform Legislation," November 19, 2009, 29 Jan. 2010 http://thegovmonitor.com/world_news/united_states/new-york-agrees-on-public-authorities-reform-legislation-15823.html.

²²Act §18 amended the Public Authorities Law ["PAL"] §2824 in New York imposing more stringent regulations.

²³ the Gov Monitor, "New York Agrees on Public Authorities Reform Legislation," November 19, 2009, 29 Jan. 2010 http://thegovmonitor.com/world_news/united_states/new-york-agrees-on-public-authorities-reform-legislation-15823.html.

²⁴ <http://www.legis.state.wi.us/statutes/Stat0181.pdf>



only non-profit corporation that is subject to Wisconsin's Open Meeting Law as a nonprofit corporation operating the Olympic ice training center under s. 42.11 (3).

Public Authority

Wisconsin law names numerous authorities, including the Wisconsin Aerospace Authority (ch. 114, Wis. Stat.), Health Insurance Risk Sharing Plan Authority (ch. 149, Wis. Stat.), Quality Home Care Authority (ch. 52, Wis. Stat.), Health Education and Facilities Authority (ch. 231, Wis. Stat.), University of Wisconsin Hospital and Clinics Authority (ch. 142, Wis. Stat.), and others to lead efforts as an extension of state government. The challenge with the creation of an authority in Wisconsin, as is often the case with other states, is that Wisconsin law is not clear around the typical characteristics of an authority (i.e., the legislation created to establish a specific authority defines the characteristics of that specific authority.). Board members for the authorities mentioned above are appointed by the Governor and approved by the legislature.

In reviewing audits conducted by Wisconsin's Legislative Audit Bureau as well as meeting minutes of the authorities mentioned above, we have identified local examples of public authorities as well as perceived constraints:

- The University of Wisconsin Hospital and Clinics required changes to its Board structure that required legislative approval to take affect
- The Health Insurance Risk Sharing Plan Authority required changes to its funding formula that required legislative approval prior to the change being able to take affect
- The Quality Home Care Authority is subject to Wisconsin's purchasing and competitive bid process that limits its flexibility with securing services

Authorities (e.g., the Health Insurance Risk Sharing Plan Authority) have the ability to access state benefits and retirement, have bonding authority, and may be capable of borrowing money with State backing. According to Wis. Stat. § 19.31-19.39, authorities are always subject to Wisconsin's Public Record Law. Wis. Stat. § 19.81-19.98 further identify that a quasi-governmental corporation or public body corporate and politic be subject to Wisconsin's Open Meeting Law.

2.4.2.2 Wisconsin Stakeholders

As was noted in *Section 2.1.1.1 Stakeholder Input*, Wisconsin stakeholders indicated that they were most comfortable with a private-sector led HIE effort. In reviewing the characteristics of the two models discussed above, Wisconsin stakeholders' motivations most closely align with a non-profit corporation. At the summit meetings, stakeholders expressed that board members should be selected through an election process rather than appointment by government officials. Most public authority boards in Wisconsin are appointed by a government official.

2.4.3 Recommended Legal Structure

Given the current environment in Wisconsin, the recommendation for a public-private partnership, and stakeholder preferences, the legal structure that best fits Wisconsin's needs is a non-profit corporation. The influencing factors that support this recommendation include the following:

- *Procurement processes* – The procurement process for an authority is more susceptible to state procurement rules, whereas non-profit entities are not subject to state procurement rules. This may result in protracted procurement timeframes and delay implementation



- *Government involvement* – As the NGA has identified, public authorities remain a public actor. Wisconsin stakeholders indicated their preference for state-level HIE efforts in Wisconsin to be a private-led effort, not an extension of state government
- *Board member selection* – Wisconsin stakeholders indicated members of the board should be selected through an election process. In Wisconsin, authority board members are appointed by government officials. With non-profit corporations, the process of selecting board members is defined in the entity’s bylaws and is often executed through an election or nomination process
- *Immunity from political influence* – While some studies have indicated that a public authority is immune to political influence, there is not clear cut evidence that this is the case. With government involved in the appointments of the Board of Directors, politics may influence the position of Board members
- *Experiences of Wisconsin’s existing HIOs* – Wisconsin has experienced a number of successes with its existing HIOs (e.g., RWHC, WCHQ, WHA, WHIE, and WHIO). All of the HIOs operate as non-profit corporations independent from state government. The HIOs have been able to successfully implement data use/sharing agreements, generate funds to sustain their organizations, convene stakeholders and build a sense of trust among stakeholder groups, collaborating with state government, and bring much needed expertise to the table on a regional or local level
- *Experiences in other states* – As noted in the external scan, in states where an independent PPP governance model was adopted, the vast majority of states have either designated an existing non-profit corporation or required that the entity be a non-profit corporation
- *Financial sustainability* – As noted previously, public authorities that are not independent non-profit corporations, experienced challenges associated with incurring significant debt. Additional controls have been put in place in some states by increasing the level of control/oversight of state government in monitoring the financial status of a public authority. Other states have introduced requirements for independent audits to be conducted. The ONC requires the entity that governs over state-level HIE to produce and execute a plan to implement financial policies, procedures, and controls that will support ongoing financial sustainability

While some of the factors may be applicable to both legal structures, public authorities may be more adversely impacted by the influencing factors identified above. The motivations of Wisconsin stakeholders are clear and have heavily influenced the recommended legal structure as their participation is critical to the success of the state-level HIE.

As required by the ONC and further discussed in Section 4, there are additional stipulations related to transparency and openness that must be addressed by the non-profit corporation.

3 SLHIE OPERATING MODEL ASSESSMENT

3.1 Methodology

The approach for assessing the SLHIE Operating Model follows the steps depicted in the flow below.





3.1.1 Define Technical Service Options

The stakeholder assessment and environmental scan effort analyzed stakeholders’ preferences for interoperability services to be provided at the state versus the regional level. The aggregated stakeholder asset data summary and service prioritization effort detailed the list of interoperability services that could be offered by a SLHIE. These two efforts provide a needed reference framework as the analysis now focuses on the operating model for the Wisconsin SLHIE.

Without repeating the results of these two efforts, it is useful to keep in mind that interoperability services are divided into two broad categories: “patient/population health” and “shared-utility” technical services.

3.1.1.1 Patient/population health services

Patient/population health services are those services that directly impact patient care (e.g., a lab results exchange, a medication history exchange, etc.) and generally correlate to a HHS/NeHC use case. They correspond to the direct delivery of an HIE, either by allowing the secured exchange of patient data or by allowing patient data analytics across whole communities. These services can be provided by regional HIEs. They can also be provided by the SLHIE in many different ways. For instance:

- The SLHIE could provide a patient/population health-focused service by connecting various regional HIEs and/or connecting these regional HIEs to the National Health Information Network (NHIN)
- The SLHIE could provide a patient/population health service-focused service “by default” connecting individual stakeholders that do not have the capacity to form or join a regional HIE
- The SLHIE could provide a patient/population health service-focused service as a public utility in lieu of regional HIEs

Each of these scenarios corresponds to a different SLHIE operating model based on the role played by regional HIEs, as will be detailed later in this document.

Patient/population health services examined include the following list:

Patient/Population Health Services	
<ul style="list-style-type: none"> • (Chronic) Disease Management • Advanced Directive • Biosurveillance • Claims Transactions • Clinical Trial Registry • Continuity of Care Record • Credentialing • Diagnostic Results Reporting (image) • Diagnostic Results Reporting (text) • Eligibility Checking • e-Prescribing • Full Interoperable Exchange 	<ul style="list-style-type: none"> • Health Bank • Immunization Registry • Medication History Exchange • Outcome Measurement and Reporting • Personal Health Record • Population Management • Real-Time Resource Utilization/Availability • Referral/Discharge Service • Regulatory Reporting • Research EHR • Secure Provider Messaging • State-wide Formulary

Table 8. Patient and population health services examined.



3.1.1.2 Shared-utility services

Shared-utility services are interoperability services that enable the patient/population health services and generally correlate to components within the HIE’s technical architecture (e.g., patient identifier, record locator service, etc.). They typically do not correspond to the direct care delivery function of an HIE, but help “power” it. Shared-utility services can be part of an integrated HIE solution or discrete components assembled to create a composite HIE solution. They can be part of a regional HIE solution, or provided by the SLHIE so the regional HIEs do not have to each deploy and operate these technical services, and instead can consume the technical services provided by the SLHIE.²⁵ This construct does not necessarily mean the SLHIE has to be the technical operator of these services—the SLHIE could arrange for a third party, such as one of the regional HIEs, to provide the services on its behalf. Examples of shared-utility services include the following:

Shared Utility Service	Definition
Advanced Directives Management	Maintains and exchanges a patient’s legal documentation such as a living will, durable power of attorney for health care, etc.
Audit Trail	Tracks when, where, and what data was accessed and who accessed the data through an HIE entity
Clinical Decision Support	Distributes standardized clinical rules that can be incorporated into EHR systems or e-Prescribing systems in support of clinical decision making at the point of care
Clinical Portal	A web-based service offered to providers for accessing, viewing, and downloading clinical data available from data sources connected to an HIE
Cross-Enterprise User Authentication	A mechanism for identifying and authenticating clinical system users to validate their right to access clinical information based upon privacy rules, patient consent, and individual user and organizational roles
Integration Engine (Data Transformation)	A mechanism for facilitating the intake of data in multiple formats in real time through the use of an integration engine, which transforms the data into a useable format
Patient Consent Management	A process for defining levels of patient consent and for tracking those consents and authorizations to share personal health information through an HIE entity
Patient Identifier	A methodology and related services used to uniquely identify an individual person as distinct from other individuals and connect his or her clinical information across multiple providers using an Enterprise Master Patient Index (EMPI)
PHI De-identification	A mechanism for removing demographic and other person-identifying data from personal health information and other health care data so that they can be used for public health reporting, quality improvement, research, benchmarking, and other secondary uses
Record Locator	A mechanism for identifying and matching multiple patient records together from different data sources
Terminology Service	A service that ties together technology, nomenclature, data-element, or coding-transactions standards across disparate systems, normalizing (among others) HIPAA-standard transaction sets including HL7 and ANSI, LOINC, SNOMED CT, RxNorm, ICD, NCPDP, HCPCS, CPT, and document terminology

Table 9. Examples of shared utility services.

3.1.2 Define Function Options

In addition to shared-utility and patient/population health services, the SLHIE’s operating model is also defined by the functions it will perform. A function is a one-time or ongoing activity the

²⁵ This construct is clearly envisioned by ONC in its State HIE CAP FOA. Technically, it assumes a service oriented architecture (SOA) that may be ahead of the HIE software marketplace’s current capability.



SLHIE can perform to support HIE deployment or operations. Functions a SLHIE may perform include the following.

Possible SLHIE Functions

- Interpret and support the application of HIE standards
- Interpret and support the application of a privacy/security framework
- Conduct HIE-related outreach and education programs
- Administer HIE funds (e.g., HITECH related)
- Connect the various regional HIEs (if applicable). Connect them to the NHIN
- Manage centralized repository of de-identified data
- Develop the State’s HIE reference architecture
- Manage regional HIEs’ certification process
- Operate the state-level HIE covering both state and regional HIE levels

Table 10. Potential SLHIE functions.

3.1.3 Assess Stakeholder Input on Potential Services/Functions

- Stakeholders voiced preferences on the shared-utility services for the SLHIE at the HIE Regional Summit Meetings and through the online HIE Capabilities Survey. Stakeholders were generally supportive of services and functions related to the establishment of a health information exchange. They favored initially providing minimal state-wide services and expanding on functions as the role of the SLHIE evolved.

3.1.3.1 Feedback from Stakeholders on Technical Services Options

Feedback on patient/population health services

- The patient/population health services prioritized in the stakeholder asset data summary and services prioritization report used stakeholder feedback and evaluated the patient/population health services on strategy/compliance, participation, financial, and technical criteria. The top eight patient/population services were denoted as “first-tier” and “second-tier” services out of twenty-four possible patient/population health services. They are represented in the table below. For detailed information on this analysis and prioritization, refer to the Stakeholder Asset Data Summary and Services Prioritization report.

Tier	Patient/population health services
First Tier	<ul style="list-style-type: none"> • Outcome Measurement and Reporting • Population Management • e-Prescribing • Continuity of Care Record
Second Tier	<ul style="list-style-type: none"> • Medication History Exchange • Advance Directive • Diagnostic Results Reporting (image) • Biosurveillance

Table 11. First and second tier services indentified in the Stakeholder Asset Data Summary and Services Prioritization report.



3.1.3.2 Feedback on Shared-Utility Services

- Stakeholder provided feedback on the shared-utility services is shown in the table below. Many of the shared-utility services stakeholders preferred align with the ONC CAP suggested state-level shared services. While stakeholders prefer specific shared-utility services (e.g., patient identifier, record locator, and audit trail) to others (e.g., advanced directives management and clinical decision support), with preferences ranging by 43%, the lowest prioritized shared-utility service (advanced directives management) was still ranked as critically or very important by a majority of stakeholders participating in the survey.

Shared-Utility Services	Critical/Very Important	ONC Cooperative Agreement State-Level Shared Services
Patient Identifier	94%	Patient Locator Service
Record Locator	87%	Data/Document Locator Service
Audit Trail	83%	
Cross-Enterprise User Authentication	81%	Security Service
Integration Engine (Data Transformation)	78%	Secure Routing and Messaging
Patient Consent Management	75%	Consent Management
Clinical Portal	75%	
PHI De-identification	72%	
Terminology Service	63%	Terminology Service
Clinical Decision Support	56%	
Advance Directives Management	51%	Advance Directives

Table 12. From Stakeholder Asset Data Summary and Services Prioritization Report. Percentage of respondents who identified the shared-utility technical services as “critically” or “very important” in the HIE Capabilities Survey mapped to the ONC’s State HIE CAP FOA’s state-level shared-utility services.

The SLHIE operating model depends heavily on which patient/population health and shared-utility technical services the SLHIE intends to provide and the extent of regional HIE development across the state. While the Stakeholder Assessment and Environmental Scan and Aggregated Stakeholder Asset Data Summary and Service Prioritization deliverable activities help gauge stakeholders’ preferences on the interoperability services the SLHIE should provide, more detailed analysis must be conducted in Phase Two of the WI SLHIE Planning and Design Project.

3.1.3.3 Feedback from Stakeholders on Function Options

In the HIE Summit Meetings, stakeholders shared their preference for functions to be provided by the SLHIE. Stakeholders preferred that all of the functions related to the creation, development, execution, and operation of the SLHIE be executed at a state-level rather than a regional level, with the highest preference for the SLHIE to perform functions related to the establishment of the SLHIE.

Possible Functions	To Be Provided by the SLHIE		
	Maybe	No	Yes
Interpret and support the application of HIE standards	0%	7%	93%
Interpret and support the application of a privacy/security framework	1%	10%	89%



Possible Functions	To Be Provided by the SLHIE		
	Maybe	No	Yes
Conduct HIE-related outreach and education programs	0%	13%	87%
Administer HIE funds (e.g., HITECH related)	4%	13%	83%
Connect the various regional HIEs. Connect them to the NHIN	2%	18%	81%
Manage centralized repository of de-identified data	0%	20%	80%
Develop the State's HIE reference architecture	1%	19%	79%
Manage regional HIEs' certification process	1%	26%	72%
Operate the state-level HIE covering both state and regional HIE levels	2%	42%	56%

Table 13. From the Stakeholder Assessment and Environmental Scan Report: Stakeholder preferences for the Wisconsin SLHIE performing HIE-related functions

3.1.4 Research Best Practices/Define Guiding Principles

As part of the operating model assessment, efforts were made to establish a set of guidelines for defining an operating model that would foster HIE capacity and meet Wisconsin's needs. The Public Program of State-Alliance Task Force recommended the following²⁶:

- “Governors and state legislatures should designate an HIE coordinating body, with centralized authority over governmental agencies, to align both internal governmental agency electronic HIE activities and their intersection with external public-private electronic HIE activities
- The “Coordinating Body” should have authority over state agencies and structures as well as the financial resources to support its efforts
- The “Coordinating Body” should involve and align with the State and Agency Chief Information Officers (CIOs) or equivalent position
- States can empower an existing agency or create a new entity
- The functions of the “Coordinating Body” may include:
 - Providing high-level coordination of HIE efforts
 - Aligning internal HIE efforts and their intersection with external HIE efforts
 - Assessing internal and external gaps
 - Conducting readiness assessments
 - Developing and disseminating strategic plans to align efforts
 - Developing success measures and mechanisms to hold entities accountable
 - Streamlining implementation, evaluation, and continuous improvement strategies”

Business Practice

Sustainable business model(s) that allow(s) the infrastructure to grow and adapt to new technologies, policies, and processes

If electronic HIE is to achieve sustainability as an industry, there must be incentives and business drivers that justify investments in current and new technologies and that advance the ultimate goal of electronic HIE: to improve the quality and safety of healthcare delivery in the U.S. while reducing healthcare costs

²⁶ University of Massachusetts Medical School Center for Health Policy and Research. “Report from the Public Programs Implementation Taskforce to the State Alliance for e-Health” (2008).



Business Practice	
An oversight/governance body that convenes, coordinates, and aligns the interests of all public and private stakeholders	The majority of electronic HIE stakeholders (including state governments) recognize that success is predicated on stakeholder buy in. To convene, develop, coordinate, and organize participation in the electronic HIE industry; an independent, trusted oversight/governance body is needed to act as the “responsible entity” at the state level
A management structure that efficiently and effectively manages and operates the hardware, software, and/or services to conduct electronic HIE	Whether a function of the oversight/governance body for the HIE industry is at the state level or separate from it, there must be a clearly defined management structure, or structures, for the hardware and software operations associated with electronic HIE activities. The electronic HIE operations, depending on the size, strategy, and stakeholder agreements, may be managed by one organization or by multiple organizations
Accountability structures to ensure that consumer privacy is protected when information is being shared through the electronic HIE and to ensure that appropriate security mechanisms are in place to prevent information breach, theft, and misuse	Successful and sustainable electronic HIE relies on accountability structures that ensure appropriate protection of consumer privacy and security of the data passing through and stored within the particular electronic HIE architecture. Policies must be in place to protect the privacy and security of both consumer health information and non-healthcare information that is shared and stored in the electronic HIE system. In addition, consumers need education on what information is being stored and shared as well as their options for redress and action if there is a breach of confidentiality and/or specific malicious theft or misuse of their personal information

Table 14. Best practices for fostering HIE capacity state-wide.

3.1.5 Identify Cost and Benefit Drivers

The operating model identified could include a wide range of possible services and functions, as described earlier. Some require limited but not insignificant, one-time investments (e.g., developing the State’s HIE reference architecture), and ongoing investments (e.g., administering HITECH funding, monitoring MU compliance, etc.).

When considering the future operating model for the HIE, the following cost and benefit drivers should be considered in determining the services and functions to be provided.

Cost Drivers	Explanation
Participants in the HIE	The number and type of participants in the SLHIE will influence the cost, with cost increasing as participants increase. The location of participants within specific MTAs may also increase cost
Technical assets leveraged	The number of technical state-wide assets leveraged will decrease the cost of the SLHIE.
Fees assessed	Some stakeholder types (HIOs, payer, state government) may be willing to contribute additional funding to the SLHIE
Functions provided	The types of functions provided will increase the cost of the SLHIE. However, as the scope of the SLHIE increases, additional funding modes should be identified
Technical services provided	The technical services provided will increase the responsibility of the SLHIE. Technical services can go through the procurement process or be provided by the SLHIE

Benefit Drivers	Explanation
Increased cost savings	Cost savings for certain stakeholder types (providers, IDNs) through cost reduction on laboratory tests and administrative fees, thus reducing operating costs
Improved patient care	Patient care will improve through specific shared-utilities (e.g., patient-identifier, etc.) and providing patients with specific options for care

Table 15. Sample Operating Model Cost and Benefit Drivers.

3.2 Define/Assess Operating Model Options



Depending on the outcome of the operating model assessment, the core set of technical services and functions offered could increase. Based on this analysis and findings of the Stakeholder Environmental Scan and Stakeholder Asset Data Summary and Services Prioritization deliverable efforts, the following criteria were used to determine the initial operating model for the SLHIE and the associated core functions and technical services. The following criteria are broken down into three categories: progress toward adoption and HIE, assets that can be leveraged, and stakeholder input. The icons in the diagram represent positive progress (green), some progress (yellow), and no significant progress (red).

Criteria for Assessing Operating Model Options	Strength
State-wide progress toward EHR adoption and HIE	
Regional health information organizations <i>One organization categorized as ADT/Order/Results/Care</i>	
EHR adoption rate ²⁷ <i>EHR adoption rate is 60% in Wisconsin</i>	
Existing state-wide HIE <i>While local and regional HIE assets exist, an existing state-wide HIE does not exist. The governance and operating model recommendations are provided in this report</i>	
Funding mechanism <i>The only current funding stream is the State HIE CAP. The financial sustainability model will be determined in Phase Two</i>	
Assets that can be leveraged	
State assets <i>Twenty six state assets need further examination in Phase Two</i>	
Quality and health information organization assets <i>Four quality and health information organizational assets need further examination in Phase Two</i>	
Stakeholder input	
Stakeholder preference <i>Stakeholders prefer functions related to the establishment of a HIE and shared-utility services. Stakeholders strongly prefer a PPP</i>	

Table 16. Best practices for fostering HIE capacity state-wide.

Based on our observations, Wisconsin has many organizational assets that reside in its existing HIOs (e.g., RWHC, WCHQ, WHA, WHIE, and WHIO) that could support ONC’s requirements for a SLHIE. While no single entity currently meets all of ONC’s requirements for a SLHIE, further analysis will be required to determine whether one of these entities is both willing and able to meet ONC’s requirements to become the SLHIE. Based on the State’s further assessment of this issue, it may choose to leverage an existing HIO as the SLHIE or establish a new legal entity altogether. In order to make this determination, we recommend that the State perform further analysis of state-level assets in Phase Two of the project.

3.3 Operating Model Recommendation

As a result of analyzing the various inputs, we recommend that Wisconsin initially focus on those functions necessary to coordinate and establish a foundation for building HIE-capacity state-wide. However, during Phase Two further examination of shared-utility services should be

²⁷ <http://ehealthboard.dhfs.wisconsin.gov/materials/materials/HITAdoptionSurveyReport.pdf>



considered due to minimal state-wide efforts to date. The operating model should include the following core-functions related to the creation of the SLHIE.

Functions related to SLHIE Creation

- Develop a comprehensive outreach and education program. Convene health care stakeholders to ensure trust in and support for HIEs
- Coordinate an integrated approach with CMS and state public health programs to enable/facilitate information exchange initiatives
- Set standards and policies for regional HIEs consistent with national standards (as a rule, the Wisconsin SLHIE will not develop standards or a framework of its own, but help educate regional stakeholders on defined national standards)
- Develop a state-wide reference architecture
- Determine specific data and exchange governance policies and rules, standardized data sets, implementation protocols, and reporting requirements consistent with the HIE requirements currently under development at the national level
- Create or update a standardized privacy and security framework compliant with relevant HHS-adopted standards and policies for interoperability, privacy, and security. Facilitate the development of standardized data sharing agreements
- Provide technical assistance as needed to develop HIE capacity within Wisconsin
- Help coordinate with other state designated HIE entities
- Develop a certification process based on HHS-adopted standards and certification criteria. This certification should be required for regional HIEs to operate within Wisconsin. As a rule, the SLHIE should support regional HIE initiatives as long as they are: (1) willing to serve all members of the communities in the MTA (cannot be vendor-driven or only include a limited subset of payers or providers); (2) independent, with broad governance including both public and private sector representatives and strong consumer representation; and (3) compliant with national and state interoperability standards for interoperability
- Establish enforcement mechanisms to provide oversight and accountability of regional HIE and ensure they have appropriate safeguards in place and adhere to applicable policies and laws
- Monitor providers' participation in HIE as required for MU. Monitor and plan for remediation of the actual performance of HIE throughout the state. Document how the HIE efforts within the state are enabling MU
- Conduct an HIE knowledge management program to identify and disseminate lessons learned and leading practices (both within Wisconsin and beyond)

Table 17. Core functions related to the creation of the SLHIE.

The selection of a given operating model (or models, as the SLHIE's role can evolve over time) will be part of Phase Two when the SLHIE's Strategic and Operational Plans are finalized. At this stage, the recommended approach is to: (1) create the SDE, either through naming an existing HIO as the SDE or creating a new SDE; (2) assign it specific functions (listed above) while developing the Plans and then decide on the future operating model; and (3) deploy that selected future operating model; whether it includes shared-utility, patient/population health services, or additional functions, as determined suitable for Wisconsin.

3.3.1 Role of State Government in Operating Model

Governance determines the legal ramifications for accountability. Accountability is a general term used to define the responsibilities of individuals, organizations, and industries. As state governments establish their roles in the industry of HIE, accountability should cover the following areas, as outlined in the Report to the State Alliance for e-Health.²⁸

²⁸ University of Massachusetts Medical School Center for Health Policy and Research. "Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry" (2009).



- Privacy and security
- Interoperability
- Fiscal integrity
- Universal access

The role of Wisconsin State government in the initial operating model should be to ensure accountability within the domains listed above: privacy and security, interoperability, fiscal integrity, and universal access. An additional role for state government is to oversee any changes to legislation. State government must create executive orders or pass legislation for electronic HIE. It is recommended to have periodic reviews of policies to meet constituent's current and future needs.

4 SLHIE OPERATING MODEL FRAMEWORK

The SLHIE operating model framework uses the recommended governance option and the recommended legal structure for the SLHIE governance entity (i.e., an independent public-private partnership, non-profit corporation) to describe the recommended governance guiding principles, governance structure, and associated roles and responsibilities of the governing board and its committees; as well as the recommended SDE organizational structure, roles, and responsibilities.

The recommendations for the governance and organizational structure of the future SDE involved input from various stakeholders and sources. Stakeholders provided feedback through multiple avenues, including HIE Regional Summit Meetings, the HIE Capabilities Survey, and targeted interviews with Steering Committee members, state government agencies/departments, and public/private organizations with identified HIE initiatives. Additional sources examined by the project team included:

- Alliance for Nonprofit Management
- American Health Information Management Association
- Deloitte's Non-Profit Services
- Health information organizations in 16 states and at the national level
- Internal Revenue Service
- International Center for Not-for-Profit Law
- Minnesota Council of Non-Profits
- National Governors' Association
- Pannone, Lopes, Devereaux & West, LLC
- The ONC State HIE Cooperative Agreement Program Funding Opportunity Announcement
- State-Level HIE Consensus Project
- Thompson & Thompson, PC
- Urban Institute
- Wisconsin eHealth Care Quality and Patient Safety Board

The following sections will discuss the project team's recommendations pertaining to the SDE's governance structure, organizational make-up, roles and responsibilities, and scope of functions to assure compliance with the ONC's governance requirements using the IRS governance guiding principles for non-profit entities.



4.1 Governance

A study from the State Alliance for eHealth²⁹ identified five critical elements for the success of a HIE entity:

- Engagement of key public and private healthcare stakeholders
- A formal organizational governance structure that is representative of stakeholders—early and transparent stakeholder representation as early-on as possible
- Balanced stakeholder representation
- Governing structure guiding principles/key factors:
 - The governing body has balanced stakeholder representation, yet is not so large that it impacts productivity
 - The governing body senior leadership has the necessary skills and experience to execute the goals of the organization
 - The governing body is flexible and can make changes in composition and roles over time
- A technical architecture that facilitates electronic HIE

Various SDEs and health information organizations established governance structures to advance their HIE efforts in support of goals consistent with those prioritized by Wisconsin, including improving quality, safety, effectiveness, and efficiency in care. An additional goal, emphasized by the ONC's State HIE CAP FOA and shared by Wisconsin is the financial sustainability of the state-level HIE entity and state-wide HIE infrastructure and services. Our research uncovered various approaches by health information organizations to achieve similar goals, which led us to a recommended set of requirements congruent with the IRS's governance guiding principles and the ONC's expectations.

To maintain a degree of continuity between the period before and shortly after the SDE is named or established, we recommend that a state-level HIE governing board be created and organized under the DHS and that the initial board of directors be retained until December 31, 2010. Once a permanent non-profit, public-private corporation (i.e., the SDE) is named or established, the governance structure will be organized under the SDE and the SDE will assume control. We recommend a governance structure that includes a governance board, standing committees, and workgroups supported by DHS staff in the interim, followed by the SDE's management and staff once it is established.

As required by the ONC's State HIE CAP FOA, the SDE's governance structure must be multi-disciplinary with broad stakeholder representation. The following sections describe each of the recommended components within the governance structure to achieve the ONC's intentions.

4.1.1 Governance Guiding Principles

Building on our recommendation that the SDE be a non-profit corporation, we further recommend that the Internal Revenue Service's (IRS's) guiding principles around "good governance" for non-profits serve as the SDE's foundational guiding principles. As such, the SDE's governance structure should positively reflect these principles, which are derived from the requirements for tax exemption. These principles should not replace the SDE's own set of

²⁹ University of Massachusetts Medical School Center for Health Policy and Research. "Report to the State Alliance for e-Health: Public Governance Models for a Sustainable Health Information Exchange Industry" (2009)



guiding principles, but should be foundational in creating the SDE and may also help the SDE develop its bylaws. The ONC's State HIE CAP FOA provides additional guidance for the governance of the SDE by identifying several requirements that directly align with the IRS' principles and should be used to help shape the governance structure. The following discusses both the IRS's guiding principles and the ONC's requirements.

IRS GOOD GOVERNANCE PRACTICES FOR NON-PROFITS

- *Mission Statement* – A clearly articulated mission statement adopted by the board of directors will communicate the SDE's purpose and serve as a guide to the SDE's work. The mission statement should articulate why the SDE exists, what it plans to accomplish, and what activities it will undertake, where, and for whom
- *Code of Ethics* – The board should adopt and regularly evaluate a code of ethics that describes behaviors it wants to encourage and discourage. The code of ethics should be a principal means of communicating a strong culture of legal compliance and ethical integrity to all personnel
- *Due Diligence* – Directors must act in ways consistent with a duty of care that is in good faith, with the care an ordinarily prudent person, in a like position, would exercise under similar circumstances, and in a manner the director reasonably believes to be in the SDE's best interest. Directors should establish policies and procedures to help meet the duty of care requirements
- *Duty of Loyalty* – A director is required to act in the interest of the SDE rather than in the personal interest of the director or some other person or organization. In particular, the duty of loyalty requires a director to avoid conflicts of interest that are detrimental to the SDE. Directors and staff should be required to disclose annually in writing any known financial interest that the individual or a member of the individual's family has in any business entity that transacts business with the SDE. The board of directors should adopt and regularly evaluate an effective conflict of interest policy that:
 - Requires directors and staff to act solely in the interests of the SDE without regard for personal interests
 - Includes written procedures for determining whether a relationship, financial interest, or business affiliation results in a conflict of interest
 - Prescribes a certain course of action in the event a conflict of interest is identified
- *Transparency* – The SDE should make full and accurate information about its mission, activities, and finances publicly available. Board decisions should be reflected in minutes and the board of directors should adopt and monitor procedures to ensure the SDE's Form 990, annual reports, and financial statements are complete and accurate, are posted on the SDE's public website, and are made available to the public upon request
- *Financial Audits* – The SDE must operate in accordance with an annual budget approved by the board of directors. The board should ensure that financial resources are used to further the purposes of the SDE by regularly receiving and reading up-to-date financial statements including Form 990, auditor's letters, and finance and audit reports. The board of directors should use an independent auditor to conduct an annual audit. The auditing firm should be changed periodically (e.g., every five years) to ensure a fresh look at the financial statements
- *Compensation Practices* – The SDE should pay officers and staff no more than reasonable compensation for services rendered. The board of directors should not be compensated for their services, except to reimburse direct expenses of such services. In determining reasonable compensation, the SDE could rely on the rebuttable presumption test of



section 4958 of the Internal Revenue Code (IRC) and Treasury Regulation section 53.4958-6

- *Document Retention Policy* – The SDE should adopt a written policy establishing standards for document integrity, retention, and destruction. The document retention policy should include guidelines for handling electronic files. The policy should cover backup procedures, archiving of documents, and regular checkups of the reliability of the system

ONC STATE HIE CAP FOA GOVERNANCE REQUIREMENTS

- Leveraging the IRS’s governance guiding principles will support compliance with the ONC’s State HIE CAP FOA governance requirements. These requirements include:
 - Directors and officers will be responsible for working with the governance board to set strategy and adopt policies for HIE operation
 - Bylaws will spell out the details of board composition, voting rights, board member terms, and workgroup composition
 - The governance board will execute non-discrimination and conflict of interest policies that demonstrate a commitment to open, fair, and non-discriminatory board activities
 - Activities should be open to the public and described in an annual activities report

4.1.2 Governance Structure

4.1.2.1 Summary Profile

The following matrix provides a high-level overview of the recommended governance structure for the SDE. The sections that follow provide details associated with the governance structure.

Profile Element	Description				
Governance Model	Independent Public-Private Partnership				
Legal Status/Organization	501(c)(3), Non-Profit Corporation				
Scope of Functions and Board Representation	<table border="0"> <thead> <tr> <th>Scope of Functions</th> <th>Board Representation</th> </tr> </thead> <tbody> <tr> <td> <ul style="list-style-type: none"> • Promote standards and establish policies • Administer funds • Develop privacy and security framework • Certify regional HIEs • Conduct outreach and education • Provide a neutral forum for all stakeholders • Educate constituents and inform HIE policy deliberations • Advocate for a state-wide HIE • Serve as an information resource for local HIE and health IT activities • Track and assess national HIE and health IT efforts • Facilitate consumer input </td> <td> <ul style="list-style-type: none"> • Commercial Payer • Patient or Consumer Organization • Hospital/IDN • Physician • Business Community • Pharmacy/Laboratory • Education • Quality/Health Information Organization • Public Health • State CIO • Medicaid </td> </tr> </tbody> </table>	Scope of Functions	Board Representation	<ul style="list-style-type: none"> • Promote standards and establish policies • Administer funds • Develop privacy and security framework • Certify regional HIEs • Conduct outreach and education • Provide a neutral forum for all stakeholders • Educate constituents and inform HIE policy deliberations • Advocate for a state-wide HIE • Serve as an information resource for local HIE and health IT activities • Track and assess national HIE and health IT efforts • Facilitate consumer input 	<ul style="list-style-type: none"> • Commercial Payer • Patient or Consumer Organization • Hospital/IDN • Physician • Business Community • Pharmacy/Laboratory • Education • Quality/Health Information Organization • Public Health • State CIO • Medicaid
	Scope of Functions	Board Representation			
<ul style="list-style-type: none"> • Promote standards and establish policies • Administer funds • Develop privacy and security framework • Certify regional HIEs • Conduct outreach and education • Provide a neutral forum for all stakeholders • Educate constituents and inform HIE policy deliberations • Advocate for a state-wide HIE • Serve as an information resource for local HIE and health IT activities • Track and assess national HIE and health IT efforts • Facilitate consumer input 	<ul style="list-style-type: none"> • Commercial Payer • Patient or Consumer Organization • Hospital/IDN • Physician • Business Community • Pharmacy/Laboratory • Education • Quality/Health Information Organization • Public Health • State CIO • Medicaid 				
Board of Directors	<ul style="list-style-type: none"> • 13 seats, not to exceed 18 • 3 year terms, limited to 2 consecutive terms • 3 ex officio seats reserved for state government with no term limit; 3 staggered election classes 				
Officers of the Board	<ul style="list-style-type: none"> • Chair, Vice Chair, Treasurer, and Secretary; 1 year terms, limited to 2 consecutive terms 				



Profile Element	Description
State HIT Coordinator Role	<ul style="list-style-type: none"> Advises Board of Directors; ex officio non-voting member of Selection Committee
Committees	<ul style="list-style-type: none"> Five standing committees (Governance, Finance and Audit, Standards and Architecture, Legal and Policy, and Communications, Marketing, and Education) Members of the Board of Directors serve as committee members; all committees include non-Board members except the Governance Committee; committee members are appointed by the committee chair and approved by the Board
Workgroups	<ul style="list-style-type: none"> Ad hoc and non-permanent Members identified by committee, approved by the Board
State Designated Entity	<ul style="list-style-type: none"> Management and staff include: Executive Director, Controller, Clinical Project Manager, Communications Specialist, Policy Analyst, and Executive Assistant Executive Director reports to Board of Directors; Executive Director exercises authority over the SDE

Table 18. Summary of governance structure.

4.1.2.2 Board of Directors

The role of the SDE’s board of directors is to champion the goals specified in the board’s mission, advance the objectives of the SDE, and make policy decisions. The board must consist of a broad representation of stakeholders, and represent state and local needs. As the key decision-making body, the board must retain the necessary authority to execute Wisconsin’s approved Strategic and Operational Plans for state-wide HIE, as required by the ONC’s State HIE CAP FOA. Other primary responsibilities of the board include identifying organizational goals, ensuring progress toward goals, and accountability for overall performance management. The board of directors will focus on policy issues, while the SDE will focus on the execution of those policies.

SIZE OF THE BOARD

We recommend the SDE’s board of directors initially includes 13 seats to address the ONC’s State HIE CAP FOA requirement that the SDE includes a multi-disciplinary board or commission in an advisory or governing capacity with broad stakeholder representation. Our recommendation regarding the size of the board is within the spectrum of other SDE boards nationally and is intended to strike a balance between broad representation and flexibility. This recommendation is based on a review of 10 states, in which we found the size of the board ranged from 10 to 32 directors with an average of 18. Despite contradictions in some of the most comprehensive studies regarding the size of non-profit boards, one commonality is the general understanding that smaller boards are more nimble and flexible in comparison to large boards. This is consistent with the spirit behind the IRS’s good governance recommendation that boards be active and engaged while sufficiently representing broad public interest and including the required skills to effectively govern the organization.

As the SDE’s role and services evolve over time, we recognize the need may eventually arise to add seats to the board of directors to represent additional stakeholders, fill a void from a skills perspective, or include additional resources to enhance the governance. To meet this potential need while maintaining flexibility, we recommend the size of the board not exceed 18 seats.

We recommend the initial board of directors’ seats represent 13 distinct stakeholder types. State government would occupy three of the seats (Public Health, State CIO, and Medicaid). Hospitals and physicians would both receive two seats and the other stakeholder types would receive one seat each.

Seats	Stakeholder Type	Description
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Seats	Stakeholder Type	Description
1	Commercial Payer	The Commercial Payer seat will represent private payers that operate within the state
1	Patient or Consumer Organization	The Patient/Consumer Organization seat will represent consumers through a consumer advocate. A consumer advocate could include an individual from an organization that represents a broad base of health care consumers
2	Hospital/IDN (Urban and Rural)	The Hospital/IDN seats will represent independent hospitals, hospital systems, and integrated delivery networks based in Wisconsin from urban and rural settings
2	Physician	The Physician seats will represent independent and affiliated physicians and physician practices. A physician affiliated with a hospital or hospital system currently represented on the board cannot fill the seat
1	Business Community	The Business Community seat will represent business associations and employers
1	Pharmacy/Laboratory	The Pharmacy/Laboratory seat will represent independent and chain pharmacies and non-State government laboratories in Wisconsin
1	Education	The Education seat will represent Wisconsin-based universities and other medical/health programs
1	Quality/Health Organization	The Quality/Health Information Organization seat will represent community or regional exchanges, quality-reporting organizations, societies or associations, or other similar private or non-profit entities that provide health information services to Wisconsin stakeholders
1	Public Health	The Public Health seat will represent issues specific to public health informatics and public health, and will be filled by the State Health Officer and Administrator, DHS Division of Public Health
1	State CIO	The State CIO seat will represent state technology issues, including broadband, and will be filled by the Department of Administration State CIO
1	Medicaid	The Medicaid seat will represent Wisconsin's Medicaid agency and the populations they serve, and will be filled by the Medicaid Director

Table 19. Board composition by seat and stakeholder type.

EXPECTATIONS OF THE BOARD

Beyond the size of the board of directors, a key issue is the ability to involve the right people with the right skills, capabilities, and acumen. The same issue exists for committee membership and workgroup participation. In each case, no single solution exists.

The board's primary duty and responsibility is to direct all of the SDE's affairs. The SDE's management is responsible for submitting all policy issues and alternatives or options to the board for consideration and deliberation. The board must be granted the freedom to openly discuss, deliberate, and decide upon policy issues. Bylaws should guide the process for these deliberations. Board directors will be expected to meet several obligations, including:

- *Representing the SDE* – Board directors must fulfill their responsibilities, in accordance with the Duty of Loyalty principle, in the best interest of the SDE while balancing them with stakeholder interests
- *Ethics* – Board directors must support and comply with the SDE's code of ethics and perform their duties with the utmost integrity
- *Resource Allocation* – Board directors should assist in identifying the necessary resources to allow the SDE to fulfil its mission
- *Attendance* – Board directors must actively engage in governance proceedings, in part, through regular attendance of Board meetings and implementation of Board actions
- *Leadership* – Board directors should bring insights and provide thought leadership on industry trends and developments germane to the SDE and its mission



- *Engagement* – Board directors should chair one committee and/or participate in the work of one or more the board’s committees
- *Evaluation* – Board directors must review the performance of the SDE’s executive director

In general, it will be important to nominate, select, and appoint individuals serving in any governing capacity using the following considerations:

- Demonstrated understanding and support for the mission and core values of the SDE
- Ethical character with a strong commitment to integrity in all actions and decision making
- Familiarity with the State of Wisconsin and the needs of its citizens
- Capability to think strategically, be visionary, and solve problem

Other consideration in filling the board of directors and committee membership include the following criteria, as suggested by the Alliance for Nonprofit Management:³⁰

- Industry segment
- Functional expertise
 - Industry role (e.g., CEO, Executive Director, Vice President, Program Officer, etc.)
 - Areas of capacity-building interest/expertise
 - Past experience in the capacity building field
 - Understanding non-profits and non-profit management
 - Prior non-profit or association board experience
 - Prestige within sector and community
 - Governance/management expertise
 - Demonstrated interest in advancing the SDE’s mission and initiatives
 - Values are consistent with the SDE’s core principles
 - Recognition of fiduciary responsibility of the SDE
 - Availability and flexibility to participate and commit time
 - Authority to make decisions and act on behalf of stakeholder constituency
- Personal qualities
 - Results oriented
 - Visionary thinker
 - Strategic thinking/planning skills
 - Strong problem solving/decision-making skills
 - Logical/analytical thinker
 - Creative thinker
 - Team player
 - Ethical and trustworthy

OFFICERS OF THE BOARD

We recommend four officers of the board to serve as elected positions on the board of directors, including the chair, vice chair, treasurer, and secretary. The following describes the specific duties associated with each officer of the board position.

³⁰ http://www.allianceonline.org/assets/7_allianceboardrecruitmentp.pdf



Chair

The chairperson of the board of directors would be responsible for presiding at board meetings, and is generally responsible for ensuring the integrity of the board process in fulfilling its mission and verifying that executive actions comply with all policies and bylaws. The chair would also be responsible for coordinating the annual performance evaluation process for the executive director, ensuring that all board members have the opportunity to provide an unbiased assessment of the performance of the executive director.

Vice Chair

The vice chairperson of the board would be responsible for presiding at board meetings and performing the duties of the chair in the chairperson's absence.

Treasurer

The treasurer of the board oversees the management of all funds and securities. The treasurer is required to ensure a full and accurate accounting of the SDE's finances, and to report on the financial condition of the SDE to the chair and board of directors at its regular meetings. The treasurer oversees the preparation of appropriate financial statements, and ensures all filings with state, federal, or local law are completed. The treasurer further verifies that the funds and securities of the SDE are deposited in the banks or depositories selected by the board, and ensures all expenditures are proper. Additionally, the treasurer oversees the maintenance of a ledger of all receipts and disbursements of funds by the SDE, and ensures the ledger is open to inspection by any director or others having a legitimate interest in the information. The treasurer is a member of the Finance and Audit Committee.

Secretary

The secretary of the board is responsible for keeping accurate records of the acts and proceedings of all meetings of the board, including all meeting minutes; giving all notices about the board as required by law; keeping names and addresses of all the board of directors; maintaining the official copy of the bylaws and amendments to the bylaws; and keeping all other records of the board. The secretary is also responsible for keeping the official seal of the SDE. The secretary is authorized to sign any documents that may require his or her signature.

TERM OF SERVICE OF DIRECTORS

In order to provide for the rotation of the board of directors, bylaws typically specify the terms of service of the board of directors.

Ex-Officio Directors

Three members of the board of directors are members of the board by virtue of holding a specific position in state government. These are the State Public Health Officer, Chief Information Officer, and Medicaid Director. The individuals holding these positions would be members of the board for the term of their state positions.

General Term for Directors

We reviewed the bylaws of health information organizations in three other states, as well as the bylaws of NeHC, WHIE, and WHIO. All of these entities limit the term of service for board of directors. Some of the entities we reviewed allow directors to serve consecutive terms if they are nominated and re-elected by vote. Most of these entities also stagger terms to ensure continuity on the board.

We recommend the term of service for the board of directors be limited to 3 years, which is consistent with the limit found in the bylaws of all the entities we reviewed. We also recommend



allowing directors to serve consecutive terms if the director is nominated and re-elected by vote. Using the NeHC bylaws as a model, we recommend allowing directors to serve no more than two consecutive terms.

Staggered Terms of Service

We recommend staggering the terms of service, similar to the NeHC practice. This is done by dividing the directors into three classes of approximately equal numbers. Initially, one class would have a term of 2 years, a second class would have a term of 3 years, and the third class would have a term of 4 years. At the first re-election for each class, the new members would then serve for 3 years.

Vacancies Before Expiration of a Service Term

The bylaws for the SDE should also include a process to address vacancies that occur before the original term of service for a director has expired. We recommend that the Governance Committee be designated by the board of directors to nominate candidates to fill any such vacancy, and the board of directors vote to elect the new director. The new director would serve until the original term of office would have otherwise expired.

TERM OF SERVICE OF OFFICERS

We recommend a limited term of service of 1 year for officers of the board. This is the most common limit found in the bylaws we reviewed. We also recommend officers be allowed to serve for one additional year if nominated and re-elected by vote. This recommendation is based upon the NeHC bylaws.

4.1.2.3 Standing Committees and Workgroups

A review of 12 state-level HIEs, SDEs, and other related organizations identified consistencies in the types of and number of standing committees that support the board of directors. Based on this research, we recommend the governance structure include five standing committees to support and advise the board of directors. The standing committees would include Governance, Finance and Audit, Standards and Architecture, Legal and Policy, and Communications, Marketing, and Education.

Upon approval of the board and at the direction of the committee, workgroups may be formed to focus on specific tasks based on need and consistency with the bylaws. Workgroups do not possess decision-making authority and are not intended to be permanent. They typically perform research, conduct studies, and exist until their assigned tasks are completed. Approval to form a workgroup must be received from the board of directors or the Governance Committee, if so delegated by the Board. Examples of likely workgroups include a Privacy Workgroup, Consumer Outreach Workgroup, and Consent Management Workgroup. The committee chair and members are responsible for identifying workgroup participants. To avoid any conflicts of interest, participants must receive approval from the board of directors or the governance committee, if so delegated by the board.

STANDING COMMITTEE STRUCTURE

In addition to the review of 12 state-level HIEs, SDEs and other related organizations noted above, the following information was considered in the development of the committee structure for the SDE:

- The convening and coordinating functions required of the SDE
- The functions identified in the ONC's State HIE CAP FOA



- Bylaws of health information organizations in other states
- Information about general practices for non-profits, such as from the International Center for Not-for-Profit Law

Primary consideration was given to the financial, technical, policy, and communications functions associated with operating the SDE as convener and coordinator of state-wide HIE at a state level. The suggested committee structure is designed to address those functions. We also considered that other states and non-profit board structures typically have one committee made up of the executive officers of the board. Some entities also have a committee that serves to nominate board members. Therefore, our recommended standing committees include:

- Governance
- Finance and Audit
- Standards and Architecture
- Legal and Policy
- Communications, Marketing, and Education (CME)

The following table maps the SDE’s state-level convening and coordinating functions to the respective committee or committees.

Functions	Governance	Finance and Audit	Standards and Architecture	Legal and Policy	Communications, Marketing, and Education
Convene					
Establish policies and promote standards					
Administer funds					
Develop privacy and security framework					
Regional HIE certification					
Outreach and education/ facilitate consumer input					
Provide neutral forum for all stakeholders					
Educate constituents and inform HIE policy deliberations					
Advocate for state-wide HIE					
Serve as an information resource for local HIE and health IT activities					
Track/assess national HIE and health IT efforts					



Coordinate			
Develop and lead plan to implement state-wide solutions for interoperability			
Promote consistency and effectiveness of state-wide HIE policies and practices			
Support integration of HIE efforts with other goals, objectives and initiatives			
Facilitate alignment of state-wide, interstate and national HIE strategies			

Table 20. Mapping of SDE convening and coordinating functions to the recommended standing committees.

COMMITTEE CHAIRS AND MEMBERSHIP

Consistent with practices of other health information organizations, we recommend that the chair of each committee be a director of the board, selected by the board, and that each committee includes at least one board director in addition to the chair. In order to foster greater participation in the activities of the SDE, we recommend that all committees, with the exception of the Governance Committee, include non-board members.

We further recommend the chair of each committee appoint the members of the committee, with approval of the board of directors or the Governance Committee if the board has delegated its authority to that committee. The board of directors may also be authorized to limit the term of membership of any committee, and provide for the rotation of committee members.

COMMITTEE OPERATIONS

Upon formation, each committee would initially be charged with developing a charter to carry out its mission, consistent with the SDE bylaws and in accordance with governance guiding principles described in Section 4.1.1. All committee members will be expected to comply with the governance guiding principles.

Committees may establish workgroups as needed to address specific issues. Workgroups may consist of as many people as necessary to carry out the task, as determined by the chair of the committee. Workgroup members can be any person of any affiliation with demonstrated interest and applicable expertise to carry out the mission of the group. Workgroup members do not have to come from committee or board of director membership.

Workgroups formed to address an issue would be charged with presenting options to the committee, and may recommend a preferred option. Committees would review options and make a recommendation to the board. All committee recommendations must be approved by the board or the Governance Committee if the board has delegated decision-making authority to the Governance Committee.

In the interim, until the SDE is named or established, DHS staff will work with the chair of the committee to develop agendas and identify issues for committee action. We recommend the committees require a majority of the voting members present in order to take action on agenda items.



Committees should be required to report to the board on a regular basis. Meeting minutes and reports need to be captured and made public via a website or other mechanism in a timely fashion consistent with the governance guiding principles.

COMMITTEE PURPOSE, MEMBERSHIP AND MEETING SCHEDULE

Governance Committee

Initially the Governance Committee and the Legal and Policy Committee are responsible for drafting bylaws, including policies and procedures for compensation, and other operational procedures.

Once the bylaws are established, the Governance Committee is responsible for recommending to the board of directors any changes to the mission or bylaws of the SDE. Additionally, the Governance Committee advises the board on activities that support and advocate for a state-wide HIE. The committee also recommends activities that provide oversight and accountability of HIE to protect the public interest. It recommends goals and measures for achieving the goals that reflect consensus among stakeholders. This committee advises and reports to the board on the operations of the SDE, including staff hiring/terminations, procurements, project management, and program evaluation.

The board of directors is authorized to delegate its authority to the Governance Committee for decision making to the extent permitted by law, with the exception of changes to the bylaws. Changes to the bylaws would require approval by the Board. The Governance Committee also nominates new board members, and officers of the board. Although the general procedures for nominations would be described in the bylaws, the Committee would establish and maintain additional guidelines and practices for nominating and selecting board members, officers, and members of other committees, including criteria to be used for nominating individuals. The Committee would also be responsible for recruiting, interviewing, and selecting candidates for nomination, taking into account the skills needed for the board. Additionally, when the executive director position is vacant, a Selection Committee would be established by the board of directors to work in coordination with the Governance Committee to recruit the executive director for the SDE.

As election cycles near, the work of the Governance Committee will necessitate that its members meet more often. Therefore, we recommend the Governance Committee meet at least once per quarter, and each month during the 4 months preceding an election. Upon initial creation of the Committee, the Committee also may meet more often to develop its charter, and establish guidelines and practices for nominations.

The Governance Committee would recommend to the board, candidates for director-level positions for each open seat for the year, and for replacement directors as needed. In order to encourage and provide opportunity for participation, we recommended the Governance Committee, whenever possible, nominate more than one candidate for each open seat.

This Committee would be comprised of five members, the officers of the board of directors including the chair, vice chair, treasurer, and secretary; and one additional board director elected to this Committee. The executive director of the SDE would be an ex-officio, non-voting member of the Committee. This Committee would not include members outside of members of the board of directors and executive director. However, this Committee may establish workgroups that include non-board members.

Finance and Audit Committee



The Finance and Audit Committee establishes financial management practices; establishes audit and compliance policies; reviews the annual budget; oversees financial and operational audits; recommends and prepares Requests for Proposals (RFPs) to procure an independent audit firm; and advises and reports to the board on accounting and regulatory compliance matters. This Committee would also make recommendations to the board for administering federal and state funds provided to the SDE through grants and contracts, and for options and plans for financial sustainability of the SDE and state-wide HIE infrastructure, services, and operations. The Finance and Audit Committee would be comprised of five members who have expertise in finance and accounting.

The executive director would be an ex-officio non-voting member of the Committee. Until the SDE is named or established, DHS would staff this Committee. Once the SDE is named or established, the SDE's Controller would staff this Committee.

Any committee member who is not serving on the board of directors would be required to agree to terms designed to avoid conflict of interest. This assumes the board of directors will have agreed to such terms upon initiation into the Board—see governance guiding principles in Section 4.1.1.

The Finance and Audit Committee would meet at least every other month, or as needed, to address pertinent financial issues. Because the Finance and Audit Committee reviews the organization's budgeting and ensures its financial health, the Committee may meet more frequently when the budget is being prepared and reviewed, or to address audit issues.

Standards and Architecture Committee

The Standards and Architecture Committee serves as the forum for state-wide coordination for all standards and technical services, including patient/population health services and shared-utility technical services. The Committee recommends to the board a framework to ensure interoperability and security of HIE, and advise the Board on all technical matters associated with implementing a HIE state-wide. This Committee also makes recommendations to the Board on practices to coordinate with the State's Medicaid program and Public Health.

This committee would be comprised of seven members, to include board directors, and non-board members such as providers, CIOs, Chief Medical Officers, clinicians, and others with experience in implementation and use of health information technology. Until the SDE is established, DHS would staff this Committee. Once the SDE has been named or established, the SDE's Clinical Project Manager would staff this Committee.

The Standards and Architecture Committee would meet at least once per month.

Legal and Policy Committee

This Committee would develop and maintain a state-wide policy framework; develop and maintain model legal documents, including agreements that establish terms and conditions for provider participation, and access and use of health information; research privacy practices, and develop and maintain a privacy framework; and identify and align federal and state legal and policy requirements. This Committee would also recommend appropriate enforcement mechanisms of established policies. As necessary, this Committee would establish the process for certifying local and/or regional HIEs. The Committee would also recommend proposals for potential legislative action. Initially, the Committee will also work with the Governance Committee to establish the bylaws of the organization.



This Committee would be comprised of five members to include board directors, and non-board members with legal expertise and policy experience, and people interested in privacy matters (e.g., consumer advocates and other stakeholders). We recommend the Chief Privacy Officer or Legal Counsel from the Department of Health Services participate on this Committee. Until the SDE is named or established, DHS would staff this Committee. Once the SDE has been named or established, the SDE's Policy Analyst would staff this Committee.

We recommend the Committee meet monthly during the first year of operations to develop the initial policy framework and model legal documents, or more frequently based on the needs of the organization. On an ongoing basis, we envision the Legal and Policy Committee would meet at least every other month.

Communications, Marketing, and Education Committee

The Communications, Marketing, and Education Committee engages stakeholders and consumers state-wide in the development of HIT and HIE initiatives. The Committee develops and implements strategies for increasing public awareness and support of the state-wide HIE. This Committee recommends a communications plan to the Board, which would include consumer education and outreach, marketing initiatives to promote the state-wide HIE, media relations, and legislative relations. This Committee would also make recommendations on how the SDE should coordinate its activities with the HIT Regional Extension Center serving Wisconsin.

This Committee would be comprised of five members, to include board directors, and non-board members including citizens, consumer advocates, public health professionals, employers, University representatives, and other interested stakeholders. Until the SDE is named or established, DHS would staff this Committee. Once the SDE has been named or established, the SDE's Communications Specialist would staff this Committee.

The Communications, Marketing, and Education Committee would meet once per month.

4.1.2.4 State HIT Coordinator

The ONC envisions the role of the State HIT Coordinator to be a high-level government official with the necessary level of authority to work effectively within state government, with representatives of other states, and other public and private sector stakeholders to coordinate and manage health IT and HIE activities.

The person selected must have the appropriate expertise and capacity to address policy, political, and technical issues as they arise. The Coordinator will be fully dedicated to this role and have fiduciary responsibility and decision-making authority to effectively execute the charges of the program under the Coordinator's purview.

The State HIT Coordinator will serve in an advisory capacity to the SDE's Board of Directors and will participate on the Selection Committee as a non-voting ex-officio member. At a programmatic level, we recommend the State HIT Coordinator position include the following responsibilities:

- Assure an effective state-level HIE governance model is agreed upon and formed with clearly defined and transparent lines of accountability



- Coordinate the development of Wisconsin’s Strategic and Operational Plans for state-wide HIE in accordance with the state’s vision, direction, requirements, and the needs of Wisconsin’s health care stakeholder community
- Coordinate an integrated approach with Wisconsin’s Medicaid and Public Health programs
- Coordinate an integrated approach with the HIT Regional Extension Center serving Wisconsin
- Convene and coordinate health IT activities across state government
- Administer Wisconsin’s State HIE Cooperative Agreement with the ONC
- Communicate with stakeholders and the public on the overall status and progress on state-wide HIE goals and objectives

4.1.2.5 Wisconsin’s State Designated Entity

Noted earlier in this document, we recommend Wisconsin’s SDE operate as a public-private, non-profit corporation with significant government participation. With three seats on the board of directors and the State HIT Coordinator participating as an advisor to the Board and an ex-officio, non-voting member of the Selection Committee, we believe State government will be well represented in the governance structure of the SDE, as specified by the ONC.

Special effort was made in designing the organizational and governance structures to infuse basic democratic principles, such as participation, authorization, representation, accountability, responsiveness, and transparency through the various nomination, selection, and appointment procedures. The organizational structure is such that the SDE’s executive director is accountable to the board of directors with specific oversight functions provided by the standing committees, in particular the Governance, Finance and Audit, and Legal and Policy Committees. This structure provides for direct lines of reporting and accountability with specific checks and balances.

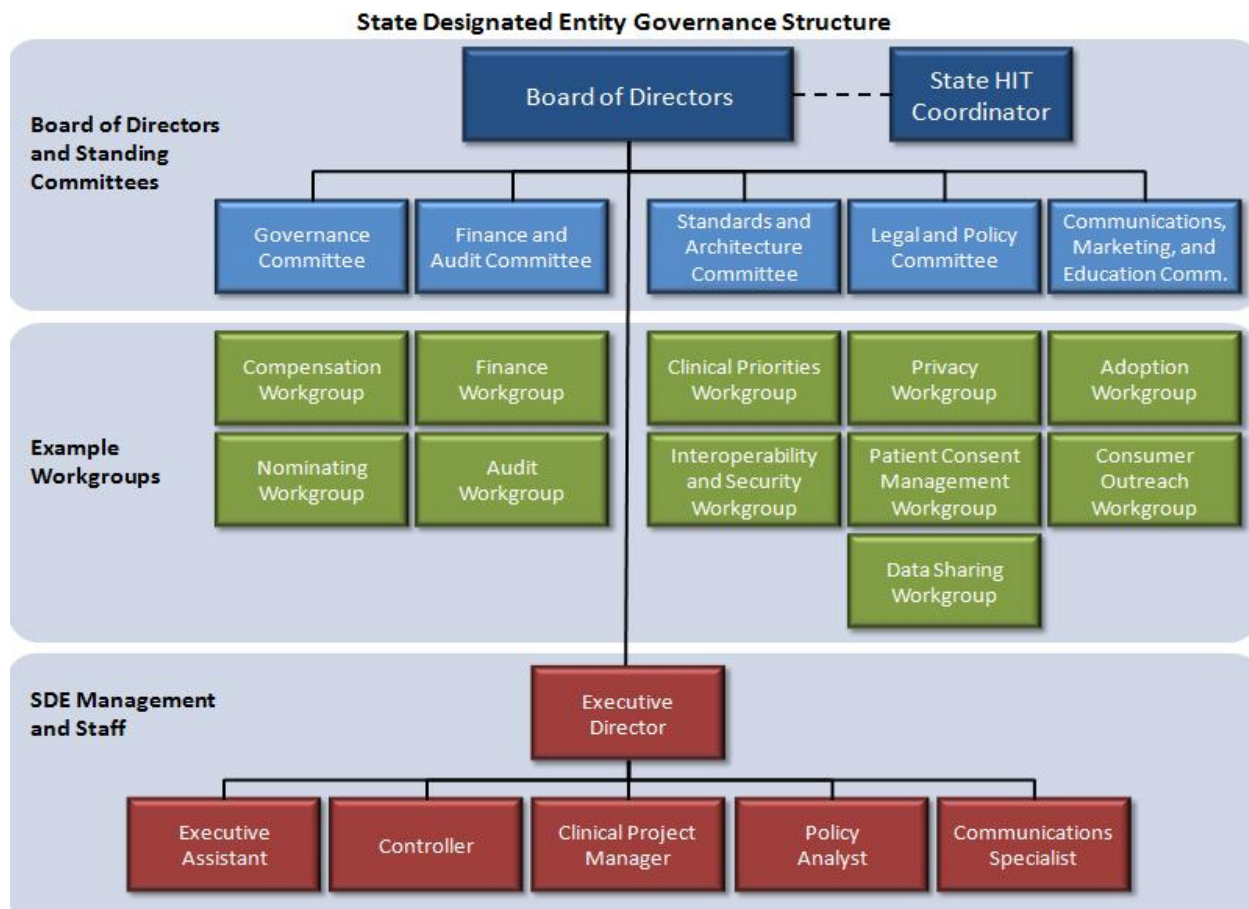


Figure 5. Overall organizational and governance structure for the state designated entity.

4.2 SDE Organizational Structure and Costs

4.2.1 SDE Roles and Responsibilities

As part of our analysis, we reviewed the staff roles and responsibilities in health information organizations in 16 other states. As with the Board Committee structure, consideration was given to the functions of the SDE initially as a convener and coordinator of state-wide HIE.

Staff will be required to participate in and take a lead role in facilitating and completing the work of the board and its standing committees. Staff would work with committee chairs to set agendas, identify issues, conduct research and present materials to the committee, as well as take minutes and schedule meetings as appropriate. Until the SDE is established, DHS would staff these activities.

In order to carry out the duties and tasks associated with the SDE, including work with the board and its committees, we recommend the SDE include six full-time employees, to include the following positions:

- Executive Director
- Controller
- Technical/Clinical Manager
- Communications Specialist



- Policy Analyst
- Executive Assistant

We recommend the SDE retain the services of legal counsel familiar with health care and non-profit/corporate issues. Although not depicted on the organizational chart, we anticipate that the SDE will leverage this resource to work in conjunction with the Legal and Policy Standing Committee, as well as for advice on legal aspects associated with the general operations of the SDE and state-wide HIE as well as interstate HIE.

As previously noted, the State has the option to name an existing HIO as the SDE, or establish a new SDE altogether. In the event that the State decides to name an existing HIO as the SDE, it should consider the ability of the HIO to leverage its existing staff in the above named roles and responsibilities to minimize incremental costs to the SDE.

The following section describes the staff functions and staff relationship to the board.

EXECUTIVE DIRECTOR

The Executive Director is responsible for carrying out the organization's mission and vision, and leading its overall strategic direction in all areas including communications, finance, technology, and policy. This position develops and executes all business plans and fundraising activities in coordination with the board of directors, as well as builds and maintains relationships with diverse stakeholders, both within the state as well as nationally. This includes coordination of efforts with State's Medicaid and Public Health programs. This position also includes ensuring the integration of local, regional, state, and national-level efforts. The Executive Director manages board activities as well, and is responsible for building trust within the board. This position oversees day-to-day operations of the SDE, including directing staff assignments, hiring/terminations of staff, and completing staff performance evaluations.

The Executive Director is ultimately accountable for state-level HIE program implementation milestones and timelines, performance measurement and evaluation, and expenditures under the State HIE cooperative agreement with the ONC. This position supports the State HIT Coordinator by providing timely information and reports for submission to the ONC. Additionally, the Executive Director works with the State HIT Coordinator to communicate with stakeholders and the public on the progress toward meeting the SDE's goals and the goals of Wisconsin's Strategic and Operational Plans for state-wide HIE.

Additionally, the Executive Director would have the authority to sign and execute documents on behalf of the SDE and the Board, to the extent permitted by the Board of Directors. Such documents may include financial documents, deeds, mortgages, bonds, contracts, leases, and reports. This authority may include receiving, depositing, and disbursing funds.

The Executive Director is an ex-officio member of the Board of Directors, the Governance Committee, the Selection Committee, and the Finance and Audit Committee. This position participates in other committees at the direction of the board.

CONTROLLER

This position is responsible for all financial aspects of the SDE, including proper accounting and reporting of financial statements, completion of required audits, and compliance with all regulatory matters. This position develops an annual operating budget, and implements procedures to monitor spending. The Controller develops and implements accounts payable



and accounts receivable procedures. This position ensures proper financial reporting to the state and federal government. This position is also responsible for participating in the development of and implementing an ongoing funding mechanism for the SDE. This position provides the Board and Executive Director with financial analyses, as needed.

The Controller staffs the Finance and Audit Committee, ensuring that all financial issues are properly addressed by the Committee.

CLINICAL PROJECT MANAGER

This position is responsible for the development and implementation of the state-wide HIE services. This position helps to ensure effective health informatics solutions for a clinical environment. The Clinical Project Manager directs all implementation activities and advises on clinician-driven design, workflow processes, and adoption strategies. This position is also responsible for the development of standards for interoperability, security, shared directories and technical services to include both patient/population health services and shared-utility technical services. The Clinical Project Manager is responsible for establishing a robust project management framework to oversee and coordinate the SDE's initiatives. This position is required to provide regular status reports to the Executive Director. With the Executive Director, this position has responsibility for the integration of local, regional, state, and national-level efforts. The Clinical Project Manager also works with the Policy Analyst on implementation of privacy and security requirements for HIE.

The Clinical Project Manager staffs the Standards and Architecture Committee, ensuring all technical issues are addressed by the Committee.

COMMUNICATIONS SPECIALIST

The Communications Specialist is responsible for conceptualizing, developing, and implementing strategies to support the state-level HIE and its initiatives and functions through public, media, stakeholder, and community/consumer relations; events; marketing; Web and print publishing; brand management; grant and report writing; and presentation development. This position produces publications to support the SDE, including press releases and newsletters. This position is also responsible for developing a state-wide outreach and education plan, to include consumers, employers, providers, payers, legislators, other government entities, and other stakeholders. This plan would include the best methods to obtain feedback from consumers on the overall direction for HIE in the state.

This position staffs the Communications, Marketing, and Education Committee, ensuring all issues are appropriately addressed by the Committee.

Policy Analyst

The Policy Analyst develops and maintains a policy framework for the SDE. This position monitors state and federal laws and regulations, ensures state HIE efforts are in compliance with laws and regulations, and recommends changes to state law to further the adoption of HIE state-wide. This position also tracks national HIE efforts. The Policy Analyst leads activities to develop, implement, and enforce privacy and security requirements, and works with the Clinical Project Manager to develop, implement, and enforce appropriate security requirements. This position also researches, suggests, and assists legal counsel and the Legal and Policy Committee in the development of model agreements and other legal documents.



The Policy Analyst will staff the Legal and Policy Committee, ensuring all issues are properly addressed by the Committee.

EXECUTIVE ASSISTANT

The Executive Assistant provides administrative support for the Executive Director and staff of the SDE for the day-to-day operations of the entity. This position assists with logistics for events and meetings; supports staff in the preparation of presentations, reports, and other documents; takes minutes of Board meetings and other Committee meetings as directed; handles travel arrangements; maintains schedules and calendars; orders and maintain supplies; creates and maintains all e-mail distribution lists; and manages the overall administrative requirements for the office, including human resources requirements (e.g., maintaining proper personnel files).

The Executive Assistant schedules and organizes Board meetings and other Committee meetings, takes minutes as directed, and assists in preparation of materials and reports as needed.

Detailed SDE duties and responsibilities can be found in Appendix B.

4.3 SDE Operational Costs

There are specific costs associated with operating the SDE, including the cost of salary, supplies and equipment, workspace, and meetings.

4.3.1 Example Salary Requirements by Position

As indicated in Table 21, our research identified salary ranges by position based on existing health information organizations in several states as well as other related organizations. We recommend further analysis be done to identify more accurate and competitive salary requirements.

Positions	Estimated Salary Ranges	Estimated Salary Requirements
Executive Director*	\$125,000 - \$225,000	\$150,000
Controller	\$80,000 - \$110,000	\$100,000
Clinical Project Manager	\$90,000 - \$150,000	\$90,000
Communication Specialist	\$40,000 - \$110,000	\$60,000
Policy Analyst	\$50,000 - \$75,000	\$70,000
Executive Assistant	\$20,000 - \$40,000	\$35,000

Table 21. Example salary costs by position.

**Estimated salary does not include potential bonus eligibility*

4.3.2 Example Costs for Filing for Non-Profit Status

Wisconsin health organizations were asked to provide their approximate cost for receiving their non-profit 501(c)(3) status. A majority of the costs are associated with the complexity of the filing and the associated lawyer fees. Table 22 reflects the range of costs incurred by the health organizations when filing for non-profit status.



Organization	Cost	Additional Detail
Education NFP	\$2,000	\$1,000 to the IRS and \$1,000 to an attorney/preparer
WCHQ	\$10,000	\$2,000 to the IRS; \$3,000 to \$5,000 for bylaws
WHIE	\$12,000 - \$20,000	Additional time was spent for follow-up and to provide formal responses to the IRS
WHIO	\$5,000 - \$8,000	Bylaws, articles of incorporation, 1023 form, and follow-up
Kansas Budget for State HIE CAP	\$40,000	Legal fees to establish a 501(c)(3)

Table 22. Cost for obtaining 501(c)(3) legal status

Table 23 depicts the breakdown of costs for filing with the IRS and state without lawyer fees. The SDE must take additional steps, not listed below, to file for Wisconsin sales and use tax exemption.

Activity	Cost
File Articles of Incorporation with the Department of Financial Institutions	\$35
Reserving name for organization	\$10 - \$25
File for Federal tax exemption (Form 1023) to the IRS	\$300 (when revenue is <\$10,000)

Table 23. IRS and State filing fees.

As previously noted, the State has the option to name an existing HIO as the SDE, or establish a new SDE altogether. In the event that the State decides to name an existing HIO as the SDE, it may be able to forego the costs of obtaining 501(c)(3) legal status if the HIO has already obtained that status.

4.3.3 Additional Cost Examples

Additional start-up costs for a SDE, in addition to the costs to file for non-profit status and salaries, include recruitment/executive search, workspace, supplies, and travel costs.

Activity	Description	Cost
Executive search	While costs can vary, typically an executive search firm charges 1/3 of the first-year salary. ³¹	\$50,000
Supplies	Laptops, software, miscellaneous supplies	\$75,000
Rent	650 square feet (at \$13.50/square foot/month)	\$103,350 ³²
Travel	Average of travel costs for five states	\$50,000

Table 24. Additional cost considerations.

In the event that the State decides to name an existing HIO as the SDE, it should consider the ability of the HIO to leverage its existing space to minimize incremental costs to the SDE.

As part of ONC's State HIE CAP FOA grant application, states were asked to estimate their annual expenditures. Table 25 represents the responses that were available at the time of this report.

³¹ http://www.nonprofitprofessionals.com/old/library/Search_Firm_Oyster.htm

³² Alabama State HIE CAP application



State	Personnel	Fringe	Travel	Equipment	Supplies	Contracts	Other	Total
Alabama	\$ 332,513	\$ 81,783	\$ 20,248	\$ -	\$ 33,350	\$ 4,900,000	\$ 2,000	\$ 5,369,894
Illinois	\$1,579,500	\$663,390	\$ 42,912	\$ 5,000	\$194,092	\$14,350,000	\$1,742,500	\$18,577,394
Kansas	\$ 240,558	\$ 72,167	\$ 24,893	\$ -	\$ 5,000	\$ 1,885,000	\$ 18,826	\$ 2,246,444
Oklahoma	\$ 330,000	\$149,000	\$120,000	\$ 85,000	\$100,000	\$ 8,750,000	\$ 15,000	\$ 9,549,000
Wisconsin	\$ 420,895	\$191,086	\$ 42,681	\$ -	\$ 39,520	\$ 1,542,378	\$ 103,373	\$ 2,339,933
Average	\$ 580,693	\$231,485	\$ 50,147	\$ 18,000	\$ 74,392	\$ 6,285,476	\$ 376,340	\$ 7,616,533
Minimum	\$ 240,558	\$ 72,167	\$ 20,248	\$ -	\$ 5,000	\$ 1,542,378	\$ 2,000	\$ 2,246,444
Maximum	\$1,579,500	\$663,390	\$120,000	\$ 85,000	\$194,092	\$14,350,000	\$1,742,500	\$18,577,394

Table 25. State-estimated additional costs from the State HIE CAP applications.

4.3.4 Additional Cost Drivers

Additional cost drivers for the SDE, include the following:

- Time required to start-up SDE (if the State chooses to establish a new SDE as opposed to naming a current HIO as the SDE)
- Additional cost to retain State staff rather than SDE staff
- Unsuccessful executive search or SDE management team recruitment
- Inability to obtain workspace as an in-kind contribution

5 GOVERNANCE IMPLEMENTATION ROADMAP AND TIMELINE

The governance implementation roadmap and timeline will partially be impacted by the State’s decision whether to establish a new SDE, or name an existing HIO as the State SDE. Based on the high-level asset inventory conducted in Phase One of the project, we have identified a number of organizational and governance assets that could potentially be re-used to meet ONC’s requirements for the SDE. Wisconsin has a number of demonstrated successes with its existing HIOs (e.g., RWHC, WCHQ, WHA, WHIE, and WHIO). All of the HIOs operate as non-profit corporations, independent from state government. The HIOs have been able to successfully implement data use/sharing agreements, generate funds to sustain their organizations, convene stakeholders and build a sense of trust among stakeholder groups, collaborating with state government, and bring much needed expertise to the table on a regional or local level.

However, based on our initial analysis, there is no single Wisconsin-based HIO that currently meets all of ONC’s requirements for the SDE. That is not to say that an existing Wisconsin-based HIO could not make the incremental investments and changes to its organization to align with ONC’s requirements. We recommend that DHS perform further analysis of this possibility, and work with existing HIOs to determine if any are willing and capable of fulfilling ONC’s requirements for the SDE.

Leveraging an existing Wisconsin-based HIO to serve as the SDE presents a number of advantages, including the following:

- Minimizes startup costs
- Provides the ability to leverage fixed staff investments that are already in place
- Reduces the timeline associated with startup
- Provides the ability to leverage existing space
- Provides the ability to leverage IT infrastructure



If the State cannot identify a Wisconsin-based HIO that is willing and capable of meeting ONC's requirements for the SDE, we recommend that the State proceed with establishing a new public-private, non-profit corporation.

Our proposed implementation roadmap aligns with the distinct phases in the State HIE CAP FOA, in which ONC describes specific milestones for planning and implementation. We recommend a phased approach, as it aligns with ONC recommendation for "an incremental approach to ensure continuous improvement and expansion of HIE capabilities." ONC recommends key milestones and measures, for the first two years, across the five domains (i.e., governance, finance, legal/policy, business and technical operations, and technical infrastructure) in HIE. In the State HIE CAP FOA, the key governance milestones include the following:

- "Establish a governance structure that achieves broad-based stakeholder collaboration with transparency, buy-in and trust;
- Set goals, objectives and performance measures for the exchange of health information that reflect consensus among the health care stakeholder groups and that accomplish state-wide coverage of all providers for HIE requirements related to meaningful use criteria to be established by the Secretary through the rulemaking process;
- Ensure the coordination, integration, and alignment of efforts with Medicaid and public health programs through efforts of the State Health IT Coordinators;
- Establish mechanisms to provide oversight and accountability of HIE to protect the public interest; and
- Account for the flexibility needed to align with emerging nationwide HIE governance that will be specified in future program guidance."³³

5.1 Approach for Governance Entity Implementation Roadmap

Our suggested approach involves three distinct phases for governance planning and implementation, beginning with planning and ending with the implementation/operational phase of the SDE. During the planning phase, we recommend that the State perform further analysis of existing HIOs willingness and capability to serve as the SDE. Based on that disposition, the implementation and operation of the SLHIE may take on different complexions.

Regardless of the State's decision regarding the SDE, our proposed implementation plan considers a number of key inputs, including the following:

- Stakeholder preferences identified from the HIE Regional Summit Meetings
- HIE Capabilities Survey
- Interviews with key stakeholders

Using input from these sources, we developed an implementation approach that provides the State with guidance on how to transition from the current state (i.e., the eHealth Board and Steering Committee) to the future state (i.e., the SDE). The figure below depicts the alignment between the ONC State HIE CAP phases (planning and implementation) and our proposed roadmap phases: planning, establishment, and implementation/operations. The focus of this section is on planning and establishment, as shown in blue in the roadmap figure below.

³³ State Health Information Cooperative Agreement Program Funding Opportunity Announcement, September 2009.



Figure 6. ONC phase alignment with planning and execution.

The following sections outline the key tasks for the State, a SLHIE governing board and its committee structure, the Steering Committee, the WI SLHIE Planning and Design Project team, and the future SDE as it relates to the planning, establishment, and implementation of Wisconsin's governance entity.

- **State** – The State includes the DHS, legislative liaisons and representatives, and any other agencies or departments within the State that may be relied upon to assist with the transition
- **Board** – The Board refers to the Wisconsin Relay of Electronic Data (WIRED) for Health Board that will be created during the establishment phase
- **Committee** – The committee structure is derived from the SDE governance structure recommendations. The committees will support the development of the Strategic and Operational Plans and the transition to implementation/ongoing responsibilities once the SDE is created
- **WI SLHIE Planning and Design Project Team** – The WI SLHIE Planning and Design Project team consists of members from Deloitte Consulting and the DHS eHealth Team and is also referred to as the WIRED for Health Project team
- **Steering Committee** – The Steering Committee is comprised of private health organization members and the State and was established to originally to steer Phase 1 of the WI SLHIE Planning and Design Project

5.1.1 High-Level Roadmap

Figure 7 represents the roadmap and timeline for planning and implementation through September 2011. A majority of the activities across the six threads occur between November 2009 and September 2010.

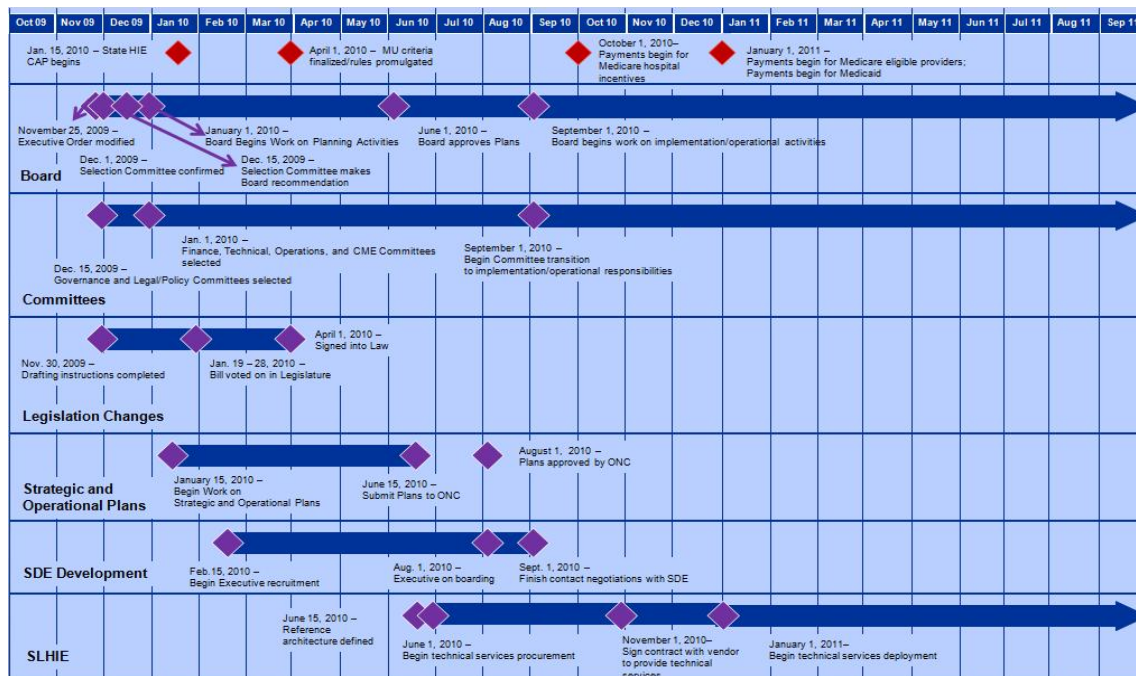


Figure 7. High-level roadmap and timeline for planning and implementation/operations.

Figure 7 above assumes that the SDE Development thread of work would encompass establishing a new legal entity as the SDE. The intent of this approach was to present a “worst case scenario” for the State if it cannot identify a Wisconsin-based HIO that is willing and capable of serving as the SDE. As previously noted, if the State can identify an entity that is willing and capable of meeting ONC’s requirements for the SDE, it would shorten this time-frame considerable.

5.2 Governance Planning

Planning is crucial to the success of the SDE. As Wisconsin does not currently have an entity to serve as the SDE, it is important to establish portions of the SDE, namely the Board and its committees to oversee and contribute to the development of the Strategic and Operational Plans required by the ONC’s State HIE CAP FOA. The State HIE CAP commences on January 15, 2010.

5.2.1 Board Development

The Board Development thread relates to the implementation steps necessary to create a new Board, the WIRED for Health Board, to oversee the planning and implementation of state-wide HIE now and into the future. The recommendation to create a new Board stems from an analysis conducted of the existing eHealth Board, the SLHIE Planning and Design Project Steering Committee, and other Wisconsin’s quality/health information organizations’ governance structures and their ability to potentially meet the criteria reflected in Figure 8.

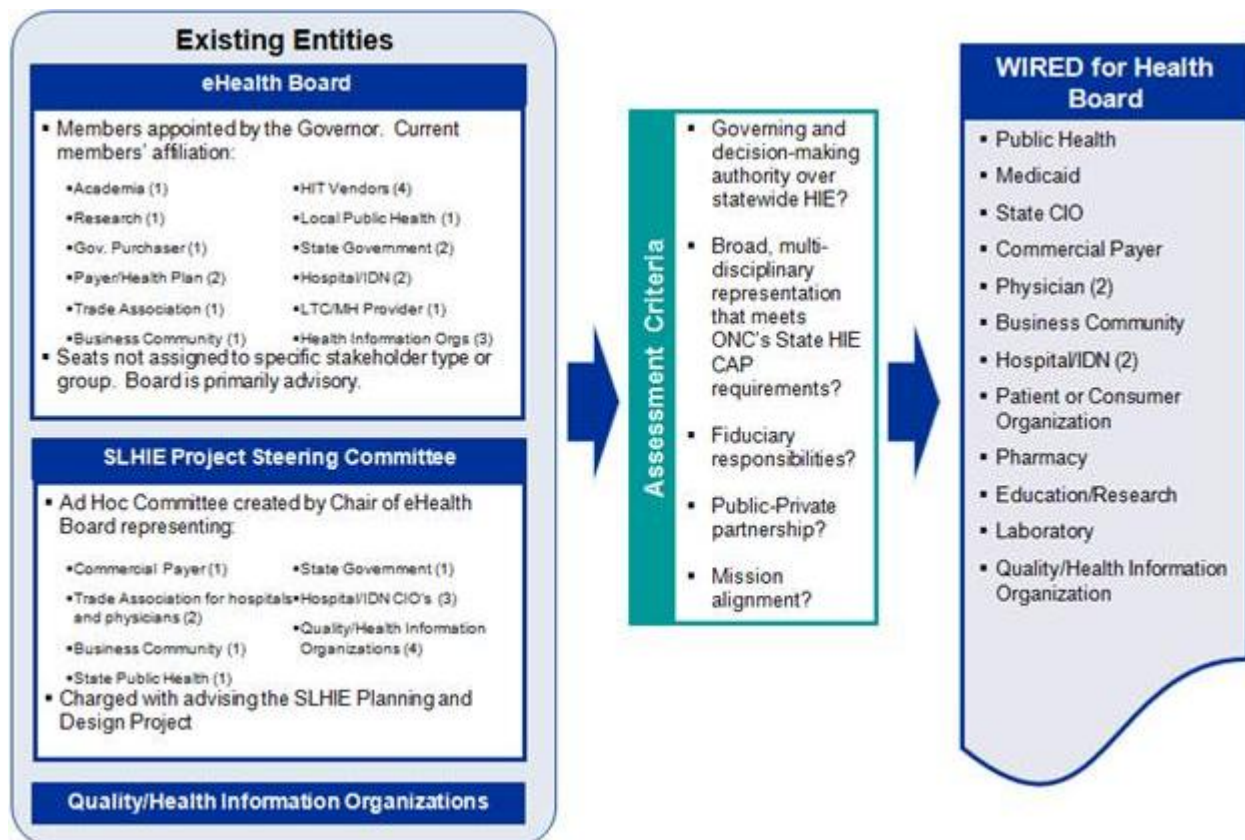


Figure 8. Assessment criteria to examine existing entities and future WIRED for Health Board.

The following steps outline the key board development activities.

STEP 1: REVIEW BOARD STRUCTURE AND RESPONSIBILITIES

Board during Establishment. The Steering Committee should review the suggested board structure and establishment responsibilities. It will be the responsibility of the Board, once established, to define its roles and responsibilities. Until legislation is passed, the Board will work with DHS and its consultants, and the State HIT Coordinator to complete the state-wide HIE planning.

Board during Implementation/Operations. During the development of the Strategic and Operational Plans, the Governance Committee will be responsible for determining the implementation/operational responsibilities of the Board. Once the Governance Committee has defined and signed off on the operational responsibilities, they will submit their recommendations to the Board for review and approval.

STEP 2: REVIEW THE IMPLEMENTATION APPROACH FOR THE BOARD

Since there is an immediate need to stand up the WIRED for Health Board, the transition from the existing eHealth Board to the WIRED for Health Board should occur through a new executive order. While one alternative is to modify Executive Order 129, the process will be more expeditious through the creation of a new Executive Order. Suggested provisions to include in the new Executive Order are:

- Sunset the existing eHealth Board (Executive Order #129)
- Create the WIRED for Health Board with the following composition:



- Public Health, Medicaid, State CIO, Commercial Payer, Physicians (2), Business Community, Hospitals/IDNs (2), Patient or Consumer Organization, Pharmacy/Laboratory, Education/Research, and Quality/Health Information Organization
- Specify roles and responsibilities of the Board, including the provision for Board members to have authority to approve the Strategic and Operational Plans
- Specify duration of the Board (i.e., until legislation is passed to create a permanent public-private entity in statute)
- Specify Board of Directors nomination and approval process

STEP 3: BOARD OF DIRECTORS SELECTION

Board during Establishment. We recommended the Board of Directors be selected by a subset of the Steering Committee (Selection Committee) with final approval from the Governor. Due to the expedited process, we recommend the Selection Committee be comprised of two members from State Government and five members of private organizations. It is the responsibility of the Selection Committee to reach out to prospective candidates and stakeholder groups for input.

Board during Implementation/Operations. For ongoing selection of the Board of Directors, the Board will be responsible for approving the Governance Committee's recommendations for new Board members. The roles and responsibilities of the Governance Committee are described in Section 4. During development of the Strategic and Operational Plans, the Board will be responsible for drafting a charter defining the Governance Committees roles and responsibilities.

5.2.2 Committee Development

STEP 1: REVIEW COMMITTEE STRUCTURE AND RESPONSIBILITIES

The recommendations for the committee structure, described in Section 4, should be reviewed by the Governance Committee and the Board during the development of the Strategic and Operational Plans. The committee structure during the establishment phase should be examined and reviewed when deciding on the committee structure during the implementation/operational phase.

STEP 2: REVIEW THE IMPLEMENTATION APPROACH FOR THE COMMITTEE STRUCTURE

A staggered approach is suggested for implementing the committee structure. The suggested timeline for establishing the committees is:

- *Governance Committee* – We recommend the Governance Committee selection be completed by mid-December 2009, allowing the Governance Committee to provide input to the legislative updates and create a charter and bylaws prior to starting the development of the Plans
- *Legal and Policy Committee* – We recommend the Legal and Policy Committee selection also be completed by mid-December 2009 in order to assist the Governance Committee with specific legislative changes related to privacy and security
- *Finance, Standards and Architecture, and CME Committee* – We recommend these three Committees have members selected by mid-January 2010 in order to provide input into and assist with developing the Strategic and Operational Plans

We recommend a staggered selection and implementation process for two reasons:



- The Governance and Legal/Policy Committees need to provide input into policy decisions that require additional support before the ONC award of the cooperative agreement and commencement of Plan development in mid-January 2010
- A staggered process allows for modification to the Committee selection process if it is determined the initial Committees (Governance and Legal/Policy) are not producing the desired outcomes.

STEP 3: COMMITTEE SELECTION

Committees during Establishment. Members of the committees are selected by the Board to develop the Strategic and Operational Plans. The Steering Committee should be provided the opportunity to suggest members to each Committee. Additionally, since the current eHealth Board had five workgroups (i.e., Patient Care, Information Exchange, Consumer Interests, Financing, and Governance) members who participated on the Financing and Governance workgroups could be considered for the Finance and Governance Committees, respectively.

Committees during Implementation/Operations. The committee members during the Implementation/Operations phase will be selected by the Governance Committee.

5.2.3 SDE Development

The following section discusses the development of the SDE. The recommended SDE structure and responsibilities are described in Section 4. Additional activities related to SDE Development include the implementation approach for the SDE, including an executive search or Request for Information (RFI)/RFP selection process.

STEP 1: REVIEW SDE STRUCTURE AND RESPONSIBILITIES

The Governance Committee will be responsible for reviewing the SDE structure/responsibilities and providing the Board their recommendations for the SDE structure. The Board will then provide their recommendations to the State for suggested legislative and policy changes. After the Board provides their recommendations, the State will be responsible for executing the legislative changes.

STEP 2: REVIEW IMPLEMENTATION APPROACH FOR THE SDE AND TRANSITION OF RESPONSIBILITY FROM THE STATE TO SDE

Implementation Approach. There are multiple ways to create a SDE to provide governance and/or technical services to the State. As previously mentioned, Wisconsin has the option of naming an existing Wisconsin-based HIO as the SDE or establishing a new legal entity altogether. The SDE implementation approach will depend somewhat on this decision, as leveraging existing assets would streamline the implementation timeframe and activities.

If the State chooses to name an existing HIO as the SDE, it will need to work with the Board to evaluate the existing staff, governance, and infrastructure assets it can leverage for the SDE. The most important position to fill will be the Executive Director for the SDE. The Executive Director will be responsible for leading the SDE and executing the contract with the State. If the State chooses to name an existing HIO as the SDE, the choice may be to expand the roles and responsibilities of an existing director to include those of the SDE Executive Director.

However, if the State chooses to implement a new legal entity for the SDE, it will need to work with the Board to begin search for a new Executive Director immediately. The Governance Committee should review this report's recommendations to conduct an executive search and submit their recommendations to the Board for approval. If the Governance Committee



recommends and the Board approves the search for an Executive Director for the SDE, then step 3 should be completed during the planning phase.

STEP 3: CREATE POSITION DESCRIPTION FOR SDE EXECUTIVE DIRECTOR

The Governance Committee will be responsible for creating a position description for the Executive Director of the SDE. The position description should contain details around the roles, responsibilities, and skills required. The Board will review and approve the Executive Director position description.

Transition Responsibility from State to SDE. The State will be responsible for drafting a contract outlining the responsibilities of the SDE and negotiating with the SDE. The contract should comply with the ONC’s State HIE CAP requirements and any recommendations of the Governance Committee approved by the WIRED for Health Board.

5.2.4 Legislative Planning

Legislative planning is necessary to draft instructions for legislation to establish, designate, and give authority to a permanent non-profit, public-private state-level HIE entity (i.e., the SDE). The legislation should permit the State to contract with the SDE. We examined seven states that have officially designated their SDE. Table 26 reflects the results of our analysis.

Executive Order or Legislation	States
Executive Order	CO, NC, AZ
Legislation	UT, VT, WA ³⁴
Unclear	NY, TN

Table 26. SDE executive order or legislation.

Some states had expressed concerns that an executive order did not seem to give weight/legitimacy to the SDE and may seek to enact legislation to address the issue of legitimacy.

STEP 1: IDENTIFY CRITICAL PATH ITEMS FOR INCLUSION IN LEGISLATION PERTAINING TO THE POTENTIAL SERVICES TO BE PROVIDED BY THE SDE

We recommend the State draft legislation that permits the State to enter into contract with a non-profit 501(c)(3). This is a required step regardless of whether the State names an existing HIO as the SDE or it establishes a new legal entity altogether. The contracted non-profit corporation would serve as the SDE and perform the functions and services identified in the proposed operating model. One notable exception is that reporting related to the ONC requirements would still be completed by the State.

We recommend the SDE be created through legislation. This recommendation follows an approach similar to the creation of WHIO, which was created through legislation (Chapter 153), as well as addresses concerns what other state’s SLHIE entities have conveyed around their entities’ lack of legitimacy. Additionally, other analysis by the Board should be completed to verify that all critical path items have been identified.

STEP 2: IDENTIFY LEGISLATIVE IMPACTS (CREATE NEW OR UPDATE EXISTING)

³⁴ Enabling legislation planned for December 2009, if necessary



The recommendations provided in this deliverable will serve as key input into the Governance Committee's recommendations to the Board, and the Board would provide its legislative recommendations to the State. Additional provisions to consider when drafting the legislation include:

- Creation of a non-profit, 501(c)(3) corporation that will assume all governing responsibility for health information exchange. The corporation may provide shared operating services if within X% of lowest bid through competitive blind process
- SDE Responsibilities: Advocate for a state-wide HIE, administer funds, conduct outreach and education, provide a neutral forum for all stakeholders, facilitate consumer input, educate constituents and inform HIE policy deliberations, promote standards and establish policies, develop privacy and security framework, certify regional HIEs, serve as an information resource for local HIE and health IT activities, and track and assess national HIE and health IT efforts
- Provision permitting the State to contract with the SDE
- Provision requiring the SDE to comply with all reporting requirements (i.e., quarterly reports)
- Measures to ensure protection of personal health information (i.e., patient data)
- Provision establishing an elected board of directors to include a minimum of 11 members, but not to exceed 18 board members
- Provision specifying board composition and that voting members from state government must include the State Public Health Officer, Chief Information Officer, and Medicaid Director
- Provision requiring the SDE to establish data use agreements

After the recommendations are provided to the State, DHS will provide the recommendations to its Legislative Liaison to facilitate the drafting of the Bill. Key steps include:

- Drafting of the Bill (late November/early December 2009)
- Identifying sponsors for the Bill
- Assigning the Bill to Committee
- Introducing the Bill and assigning it to a hearing
- Holding public hearings and executive sessions
- Voting on the Bill in legislative sessions convening (January or February 2010)

We recommend the Bill be fast tracked due to the accelerated timeframe. If enacted by the Legislature, the Bill would be signed into law by the Governor and filed by the Secretary of State between mid-March and early April.

5.3 Governance Establishment

The following section describes the primary tasks to be completed to establish the governance structure recommended in Section 4. The major execution activities are related to the Board and its committee structure, the SDE, and the legislation.

5.3.1 Board Establishment

The establishment of the Board includes standing up the Board, holding initial kick-off meetings, developing and approving the Strategic and Operational Plans, and transitioning to the Board of the SDE.



STEP 1: STAND-UP BOARD

The Board will hold a kick-off meeting to provide a formal introduction of the Board and its roles and responsibilities as part of the planning efforts. The Board will be responsible for overseeing the development of the Strategic and Operational Plans in accordance with the State HIE Cap requirements and obtaining feedback at interim milestones from the Committees.

STEP 2: APPROVE STRATEGIC AND OPERATIONAL PLANS

The Board will be responsible for approving the final Strategic and Operational Plans. After the Board approves the Plans, the Board will submit the Plans to the State for submission to ONC.

STEP 3: CREATE CHARTER FOR BOARD

The Board will be responsible for creating a charter for the operational responsibilities of the Board in the SDE.

STEP 4: RE-EXAMINE BOARD COMPOSITION AND STRUCTURE

The Governance Committee will be responsible for re-examining the Board composition and structure, and whether the Board's composition needs to be adjusted for the implementation/operations. While members of the Board may continue to serve during implementation of the Plans, they must be re-nominated through the Governance Committee. Those members selected to serve on the Board will serve a 3-year term.

STEP 5: TRANSITION TO IMPLEMENTATION

The Board of Directors would transition from overseeing the Committees responsible for the development of the Plans to overseeing the SDE management team and standing committees implementation of the Plans.

5.3.2 Committee Establishment

STEP 1: STAND-UP COMMITTEES

Each committee will hold their own kick-off meeting to determine future meeting dates and times. General roles and responsibilities for the committee will be discussed and agreed to.

STEP 2: EVALUATE COMMITTEE STRUCTURE

The committees will be responsible for re-assessing their structure and composition for the committee structure for the SDE when it is established. The committees should evaluate the recommendations in Section 4 for the following committees: Governance, Finance and Audit, Standards and Architecture, Legal and Policy, and Communications, Marketing, and Education, and whether the existing standing committee structure should change for implementation/operations.

STEP 3: DEVELOP AND SUBMIT STRATEGIC/OPERATIONAL PLAN SECTIONS TO BOARD

The committees will be responsible for assisting the WIRED for Health Project team with the development of the Strategic and Operational Plans. Each committee will be charged with specific tasks for development of the Plans. Once complete, the committees will submit their sections to the Board for approval.

STEP 4: TRANSITION OF COMMITTEE MEMBERS (AS NEEDED)

If, the structure and composition of the committees changes, the Governance Committee will be responsible for nominating new committee members for approval by the Board. Once they are approved, the committee members will report to the committee chairs.



5.3.3 SDE Establishment

The establishment phase of the governance structure is critical to the successful operations of the SDE. During this phase, the Board will recruit and onboard an Executive Director. Staff will be hired and facilities for the SDE should be secured.

STEP 1: HIRE THIRD PARTY FIRM FOR EXECUTIVE SEARCH

The Board is responsible for the selection of a third-party executive search firm. Some considerations for the selection of the firm include:

- Cost – What is the cost of the firm? Are the costs up front? Are there retention fees associated with the hiring of an executive?
- Tools – What databases does the firm use to search for applicants?
- Time – What is the expected timeframe for the executive search?

We suggest the Board select a firm that does not charge any fees up front and is only paid after the Executive has been retained for 90 days.

STEP 2: CONDUCT EXECUTIVE SEARCH

The contracted executive search firm would conduct an executive search based on the Executive Description (roles and responsibilities) provided to the firm. The expected timeframe for the search is 3–6 months. However, due to the expedited time period, we recommend possibly offering incentives for the firm if they are able to hire a high-caliber candidate on an accelerated timeline.

STEP 3: HIRE EXECUTIVE

The Board will approve the candidate selected by the executive search firm.

STEP 4: CONTRACT WITH SDE

The State will negotiate a contract with the SDE to provide services outlined in the enacted legislation.

STEP 5: HIRE STAFF

The Executive Director of the SDE will be responsible for hiring staff positions recommended by the Board. Recommendations on staff composition and skill sets are described in Section 4. All executive-level positions must be confirmed by the Board.

STEP 6: SECURE WORKSPACE

It is the responsibility of the Executive Director to secure an office space. We suggest the Executive Director reach out to the Board and other stakeholders for an in-kind space to use.

5.3.4 Legislative Execution

STEP 1: LEGISLATION IS PASSED INTO LAW

The Legislation is passed into Law. It is signed by the Governor and filed with the Secretary of State. At this time, the Board begins its transition to the SDE structure.

5.4 Implementation/Operations

For all tasks related to implementation/operations of the SDE, including the operations of the Board and its committees, refer to Section 4.



5.5 Additional Considerations

Additional considerations that should be examined when considering the planning and establishment phases are legal and policy issues and program management. While these topics are not directly related to the transition of the governance structure, it is still important to consider when transitioning.

- **Legal/policy** – We recommend that legal and policy legislation changes are addressed concurrently with legislation for the SDE
- **Program management** – While the Project Manager will be responsible for program management related tasks during the establishment phase, it is recommended the WIRED for Health Board provide guidance to the SDE around program management related tasks for the implementation/operations