

# Health Information Security & Privacy Issues for California

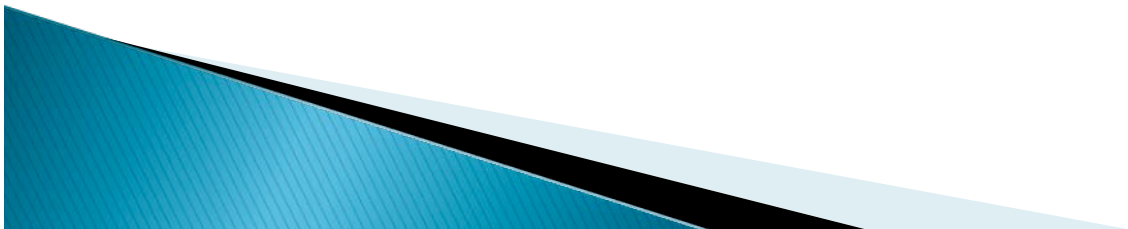
Lori Hack

Presentation to the  
Redwood Health Information Collaborative

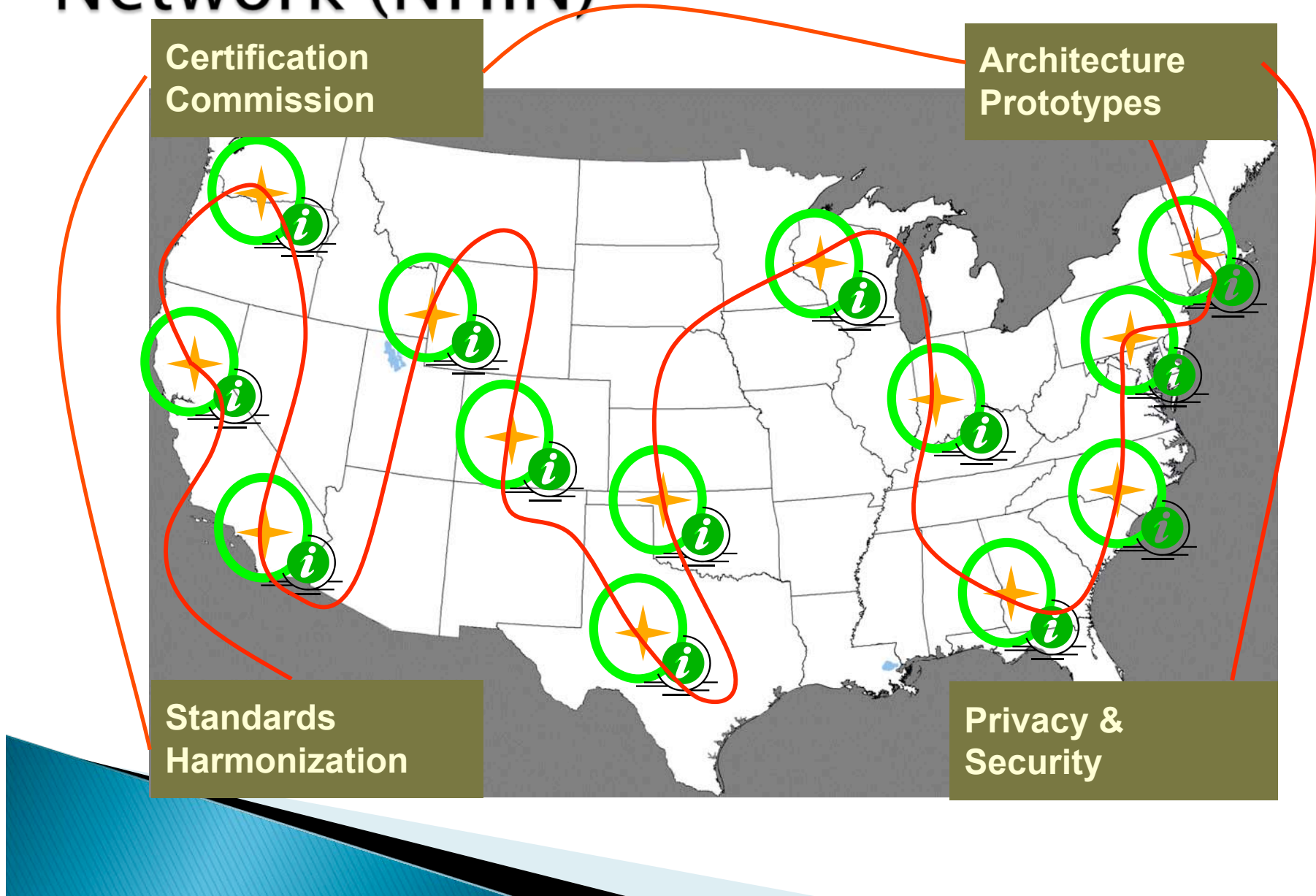
April 18, 2007

# Overview

- ▶ Privacy and Security – a National Perspective
- ▶ California's Privacy and Security Project
- ▶ Project Findings: California
- ▶ Next Steps



# Nationwide Health Information Network (NHIN)



# National Privacy and Security RFP

**HHS and AHRQ awarded the contract for privacy and security solutions to RTI International, and the National Governors' Association (NGA)**

**RTI had national responsibility to:**

Assess variations in organizational-level business policies and state laws that are barriers to health information exchange

Identify and propose practical solutions

Develop detailed plans to implement solutions



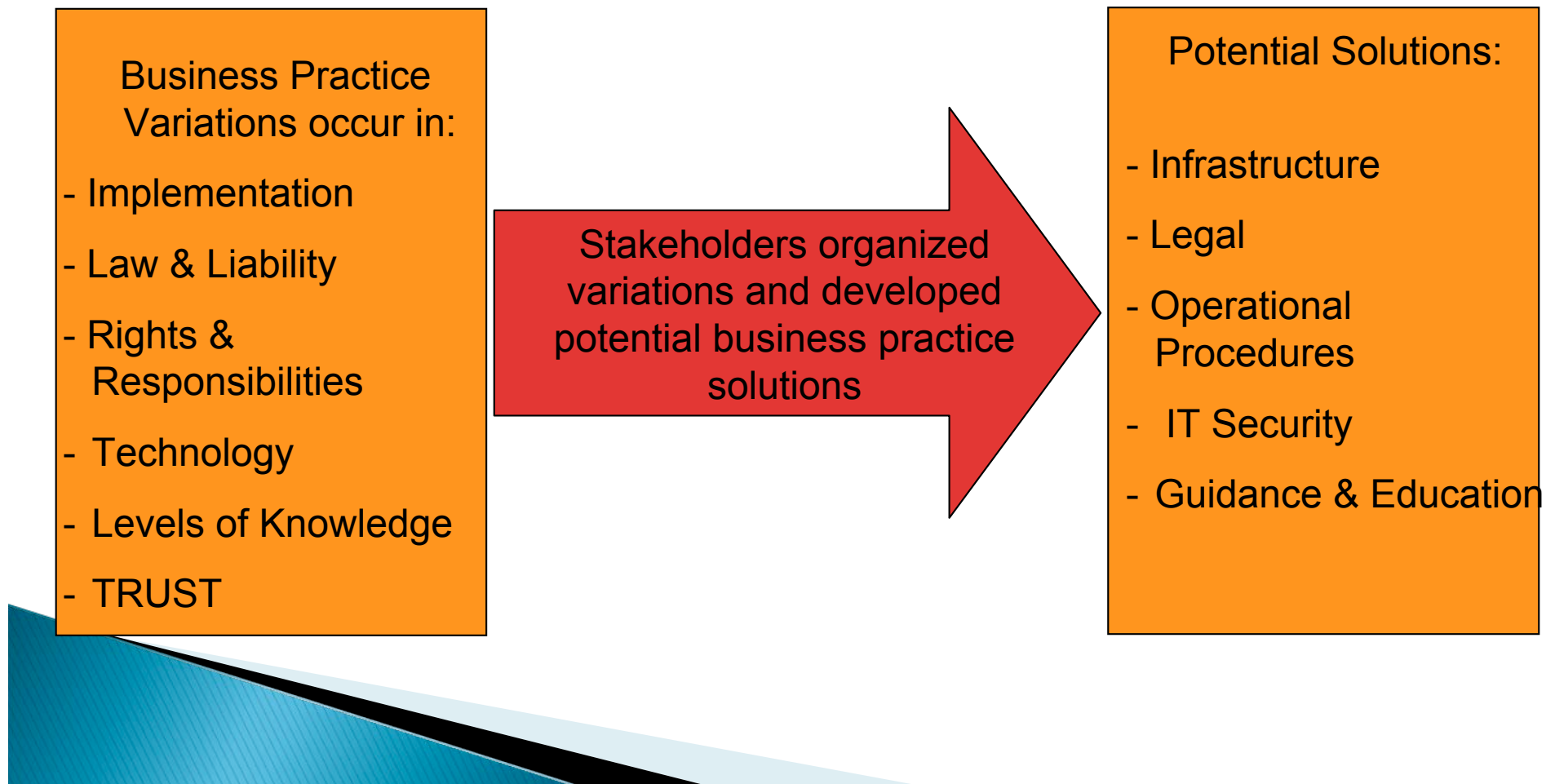
# Diverse Stakeholder Representation

- ▶ Steering Committee of 20 Public-Private Representatives
- ▶ 7 Regional Meetings
  - Mendocino, Long Beach, Orange County, San Diego, San Francisco, Santa Cruz, Ukiah
- ▶ Over 175 individuals and 95 organizations invited
- ▶ Stakeholder groups represented

Clinicians	Consumers/Consumer orgs.
Federal health facilities	Hospitals
Homecare and hospice	Laboratories
Long term facilities and nursing homes	Research institutions
Pharmacies	Physician groups
Professional associations	Public health agencies
Quality improvement orgs.	State government

# Project Findings

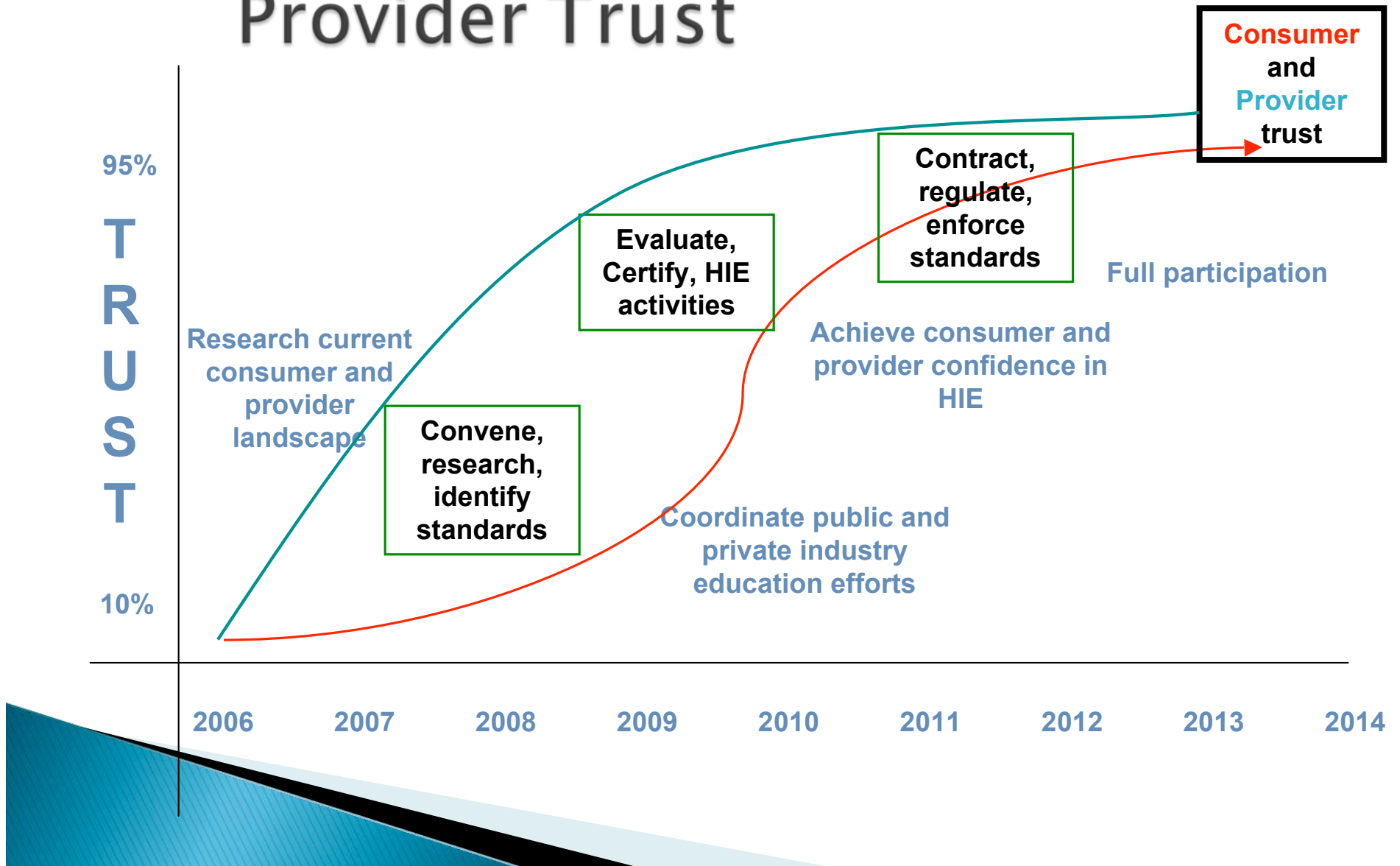
- ▶ Stakeholders identified over 200 business practice variations and condensed them into 5 categories



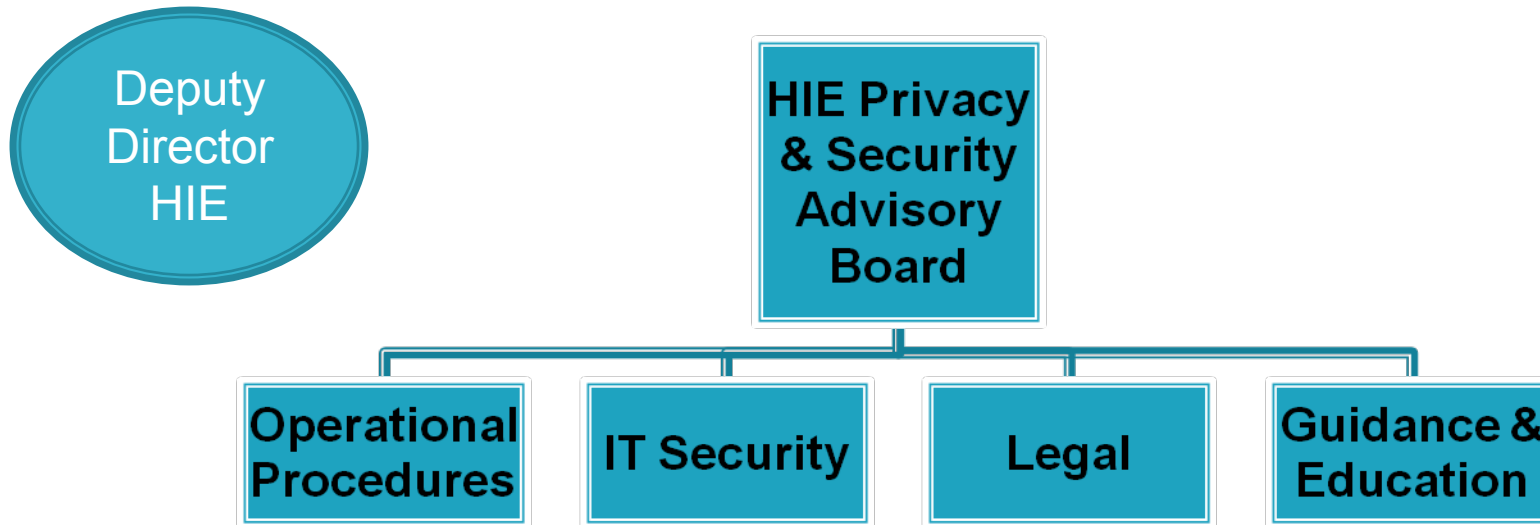
# Solutions Framework

<b>Issue</b>	<b>Solution</b>
Infrastructure	Infrastructure oversight board
Technology	Technology focus group
Law and liability	Legal committee
Rights and responsibilities	Business policies work group
Levels of knowledge	Guidance and education task force
Lack of trust	Resolve through collaboration and participation

# Ultimate Goal: Consumer and Provider Trust



# Proposed Implementation Structure

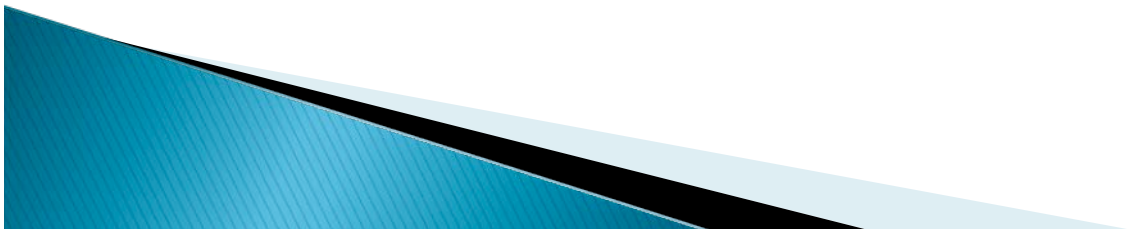


## Short-term Priorities

- E-Prescribing
- Personal Health Records
- Mental Health EMR
- Diabetes Management
- Obesity Management
- Emergency Department Overcrowding

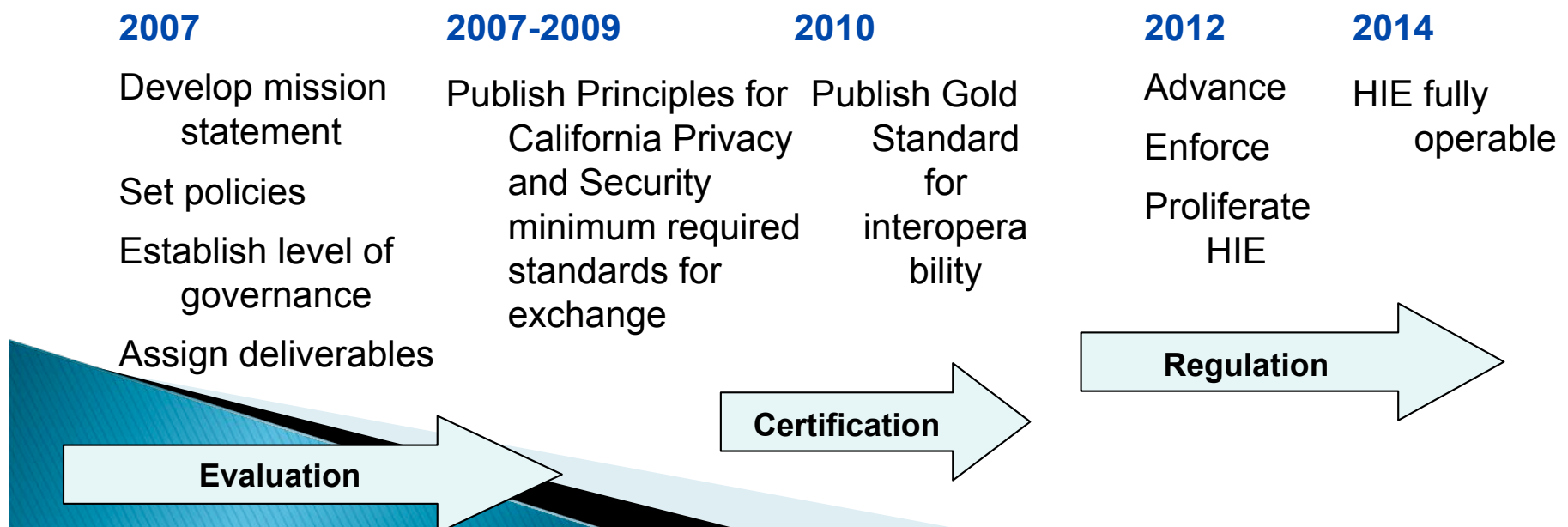
# Infrastructure

- ▶ **Context:** No governing body to oversee privacy and security policies among HIE organizations
- ▶ **Solution:** Create a board of trusted medical industry stakeholders from the public and private sectors to oversee the analysis of issues and implementation of solutions



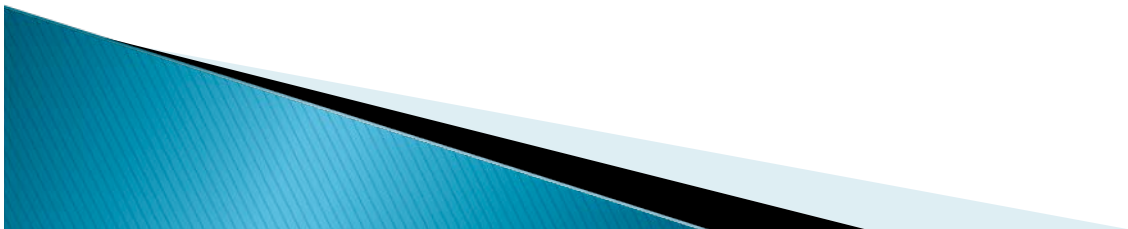
# Proposed Privacy and Security Advisory Board

- ▶ CA's relationship to federal regulatory agencies and other states
- ▶ Role, scope, and coordination with other initiatives and groups
- ▶ Continue as a public-private partnership to standardize, implement, and enforce privacy and security standards for Health Information Exchange (HIE) in CA



# IT Security

- ▶ **Context:** No statewide IT security standards
- ▶ **Solution:** Create a technology implementation group to develop and recommend a focus group of trusted medical industry stakeholders from the public and private sectors to oversee privacy and security technology solutions



# IT Security

- Activities of the focus group may include:
  - Convene a statewide summit
  - Create guidelines and standards and explore use cases to analyze solutions for:
    - MPI, digital signature, user authentication, access controls
    - Audit criteria, auditing mechanisms
  - Explore and develop certification for HIE intermediaries

# Legal

- ▶ **Context:** Lack of consensus about:
  - Federal and State privacy and security provisions
  - Privacy and security standards for covered v. non-covered entities
- ▶ **Solution:** Create a committee of trusted medical industry stakeholders and their attorneys from the public and private sectors to:
  - establish baseline interpretation of laws
  - recommend regulatory changes as necessary

# HISPCS Finding: Complex and Contradictory Laws

- ▶ CFR 42 Part 2 and CFR 45 Parts 160 & 164 diverge:
  - Terminology
  - Overriding principles
  - Operational definitions



# HISPCS Finding: Complex and Contradictory Laws

## ▶ Terminology :

- CFR 42 requires “consent” and CFR 45 requires “authorization” when referring to the right of a consumer of health care to control how the record may be disclosed.
- CFR 42 identifies the entity that holds the records as a “program”, CFR 45 as a “covered entity”.

# HISPCS Finding: Complex and Contradictory Laws

- ▶ Overriding principles:

- CFR 42 generally prohibits disclosure of information of any kind without consent.
- CFR 45 generally focuses on when disclosure is permitted and excludes TPO from the requirement for client authorization.
- It is difficult to find solid ground for statutory standards in Health Information Exchange (HIE)

# California Laws Impacting the Process

Title	Statute
Patient access provisions (PAHRA)	Cal. Health and Safety Code §§ 123100 et sequence
Basic medical record confidentiality (CMIA)	Confidentiality of Medical Information Act (Cal. Civil Code §§ 56 -56.37)
State government privacy (IPA)	Information Practices Act of 1977 (Cal. Civil Code §§ 1798 -1798.82)
Public access to records of government (PRA)	Public Records Act (Cal. Government Code §§ 6250 -6277)
Insurance Information and Privacy Protection Act (IIPPA)	(Cal. Insurance Code §§ 791 -791.27)
Provisions governing records concerning indigency	(Cal. Welfare & Institution Code §§ 17000, 17006, 17006.5)
Confidentiality of Medi-Cal Records	Section 14100.2, (Cal. Welfare & Institution Code § 14100.2) [See also Cal. Code Regs. Tit. 22 § 51009 (2001).]
Administration of Records	Section 10850, (Cal. Welfare & Institution Code § 10850)
Results of HIV/AIDS Tests	Cal. Health & Safety Code §§ 120775, 120975 -121020
AIDS	Public Health Records Confidentiality Act, 14 Cal. Health & Safety Code §§ 120775, 21025 - 121035
Lanterman -Petris -Short Act (LPS)	Cal. Welfare & Institution Code §§ 5325 -5337
Lanterman Developmental Disabilities Services Act	Cal. Welfare & Institution Code §§ 4514 -4518
Information Concerning Alcohol and Drug Treatment	Cal. Health & Safety Code § 11970.5 -11977

# Business Policies

- **Context:** No consistent understanding of the rights and responsibilities of members of the medical industry and patients, including a lack of agreement around ownership of patient data and records
- ▶ **Solution:** Create a business policies public- private work group of medical industry stakeholders, specifically consumer representatives, legal counsel, and records management representatives, to:
  - determine the business policy standards
  - develop certification criteria

# Strategic and Ethical Context

- ▶ In behavioral health, the concept of a “health record” is problematic
  - When does a health record incorporate the kinds of social and environmental health information that we in the behavioral health professions believe is so critical to quality care?

# Operational Context

- ▶ Operational issues that can be addressed technically if there is a policy in place. For example:
  - “Role based” access to data: Who is authorized?
  - Minimum Necessary data access: What can be viewed in which situation?
  - How can the access be monitored and trusted?

# Operational Context

- ▶ How does “Minimum Necessary” apply in the HIE world?
  - In the current implementation, any access to the data represents access to the entire record. ( Pull the chart)
  - Partial access to data is difficult in the paper world.
  - Technologically feasible, but how could data be withheld without complete intelligence about the remote user’s needs?

# What is a provider to do?

- Consult counsel. The most competent sources of judgment are local counsel, state attorneys general, and the courts.
- So far, there seems to be little case law.
- Assign a privacy officer to become the liaison to changes in law and regulations.
- There are a few systematic treatments of how to apply the various laws. In California OHI can help.
- Wait for litigation.

# Quality Context

- ▶ In the HISPCS study, the issue of TRUST was found to be central to the privacy policy issues:
  - Consumer trust that the availability of information will enhance quality of treatment
  - Provider trust that the availability of information will enhance treatment quality and be limited to valid uses governed by that goal.

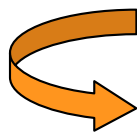
# Guidance and Education

- ▶ **Context:** Patients consumers are uninformed about their medical rights and the benefits of HIE and patient trust is critical to the success of HIE
- ▶ **Solution:** Develop a task force of medical industry stakeholders, specifically consumer representatives to examine the deficiencies in education requirements and processes in the health care industry and provide programs to improve them.



# Consumer Insight

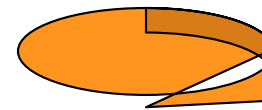
- ▶ Consumers see privacy and security precautions as important protections, *not barriers* to HIE
- ▶ Patients lack a basic understanding of HIPAA



Different provider interpretations

Different patient experiences

Patient fears and mistrust



- ▶ Patients fear
  - Refusal or loss of health care benefits
  - Lost employment opportunities
  - Misuse of information for businesses' interests (e.g., marketing)
- ▶ Providers fear
  - Misuse of information for other than treatment purposes



financial

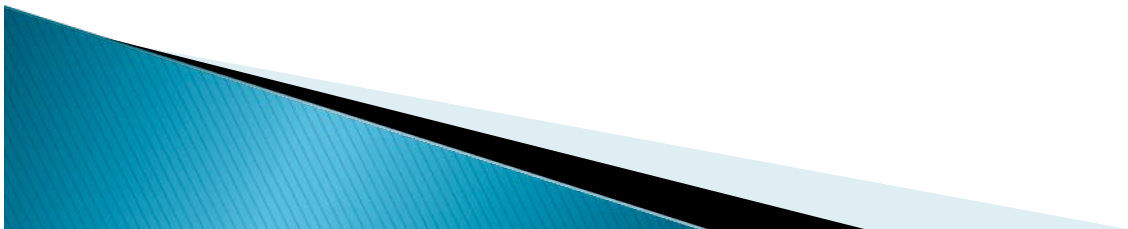
# Consumer and Provider Trust

- ▶ In order for HIE to improve the quality of health care, consumers and providers must believe that the chain of trust improves quality along the entire spectrum



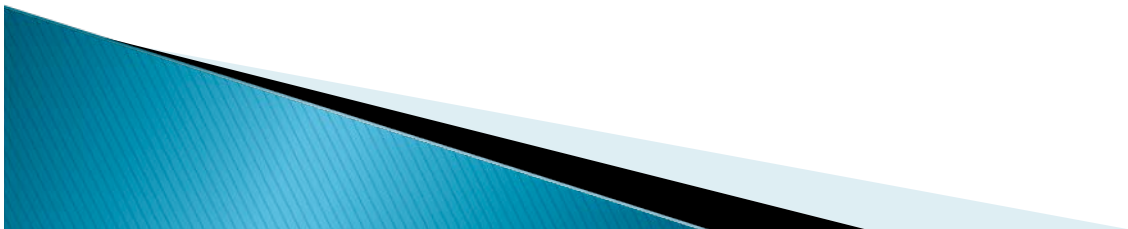
# Where do we go from here?

- ▶ Relevance to the local clinician:
  - Ensure the implementation of the electronic health record (EHR) provides the necessary security
  - Design strategies to enhance consumer and staff trust in the EHR early in the process
  - Provide educational programs to empower the consumers, providers, and community to embrace HIE as an improvement of quality



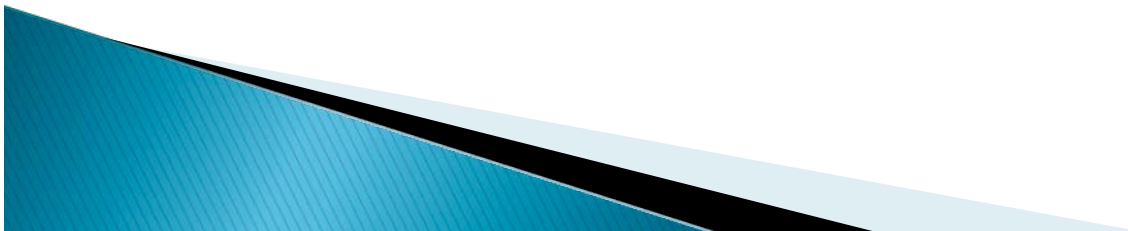
# Where do we go from here?

- ▶ HISPCS recognizes needs for HIE organizational, social and political infrastructure for privacy and security
  - In the community, will all relevant professions, consumers and agencies participate in the agenda setting?
  - The IOM recommends transition along a continuum of evidence-based coordination models from formal agreements to collocation and integrated practice. How are our EHR, PHR, and HIE designs to further this goal?
  - Since this is about quality, we avoid framing the issues in terms of “opt-in” v. “opt-out”. The issue is, how do we maximize “opt-in”?



# The final lesson

- ▶ "Teamwork is the ability to work together toward a common vision. The ability to direct individual accomplishments toward organizational objectives. It is the fuel that allows common people to attain uncommon results." --**Andrew Carnegie**



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