

ConnectVirginia Governing Body Meeting Minutes

April 17, 2012
10:00 am – 4:00 pm

Governing Body Members Present In Person

Kim Barnes
Ellen Bieschke
Sallie S. Cook, M.D.
Sandy L. Chung, M.D.
Robert Fortini, PNP
Shirley Gibson
William Hazel, Jr., M.D., Secretary of Health and Human Resources
Holly Morris
Cathy Pumphrey
Sterling Ransone, Jr., M.D., FAAFP
Karen Remley, M.D., MBA, FAAP, State Health Commissioner
Karen Rheuban, M.D.
Terri Ripley, MIT, CPHIMS
Marshall Ruffin, Jr., M.D.
Judie Snipes
Nancy Stern
John B. Syer, Jr.
Jerry Venable

Governing Body Members Absent

Jodi Fuller
Katherine Gianola, M.D.
Bert Reese
David R. Selig

Virginia Department of Health, Community Health Alliance and Subcontractors Present In Person

Jeff Burke (CHA)
Sue Feldman (CHA)
Colin Fletcher (MEDfx)
Teddy Gedamu (MEDfx)

Steve Gravely (Troutman Sanders)
Kim Huggins (CHA)
Michael Matthews (CHA)
Sandy McCleaf (CHA)
Julie Murphy (VDH)
Alissa Nashwinter (VDH)
Susan Olyha (CHA)
Tiffany Shifflett (Troutman Sanders)
Erin Whaley (Troutman Sanders)
Michelle White (CHA)
Mike Wirth (VDH)

Confirmed Observers Present In Person

Robin Cummings (MSV)
Ross Decker (Impact Makers)
Sam Owens (Sentara)
Kirsten Roberts (MSV)
James B. Sherwood (Bon Secours)

Meeting Summary:

Agenda Topic #1: Call to order and establishment of a quorum

Discussion Summary: A quorum was declared since more than a majority of the Governing Body members were present in person.

Decision/Outcome: N/A

Action/Follow Up: N/A

Agenda Topic #2: Adopt minutes from February 17, 2012 meeting

Discussion Summary: Minutes from the February 17, 2012 ConnectVirginia Governing Body meeting were presented for approval.

Decision/Outcome: A motion to adopt the February 17, 2012 ConnectVirginia Governing Body minutes was made, seconded and approved with no further discussion.

Action/Follow Up: The minutes will be made available on the ConnectVirginia website (www.connectvirginia.org).

Agenda Topic #3: Chair Report

Discussion Summary: Secretary Hazel updated the Governing Body on the General Assembly session and items that may affect ConnectVirginia including the Commonwealth's budget and the All Payer Claims Database.

Decision/Outcome: N/A

Action/Follow Up: N/A

Agenda Topic #4: Executive Director Report

Discussion Summary: Sandy McCleaf, Executive Director of ConnectVirginia, provided an update on the status of various ConnectVirginia activities.

- **Consumer Survey:** The consumer survey is complete and the final report will be finished in May.
- **Stakeholder Interviews:** Dr. Sue Feldman has begun conducting provider and consumer interviews. While Dr. Feldman is seeking to interview a wide variety of providers and consumers, she is particularly interested in interviewing those who have reservations about health information exchange to gather data that can be used to refine and improve messaging to increase participation.
- **ConnectVirginia Direct Messaging:** Phase I is going well and has been live for two months. There are about a dozen enrolled users to date and many others have expressed interest but are waiting to join until the Phase II functionality is available. The technical requirements gathering for Phase II of ConnectVirginia Direct Messaging is complete and Phase II will go live before the end of the 2nd quarter of 2012.

Decision/Outcome: N/A

Action/Follow Up: N/A

Agenda Topics #5 & 6: Review revisions to ConnectVirginia Direct Messaging End User License Agreement and Policies and Procedures for ConnectVirginia Direct Messaging Phase II

Discussion Summary: Phase II of ConnectVirginia Direct Messaging will introduce new functionality including the ability for organizations to be ConnectVirginia Direct Messaging users, the option to identify delegates for all ConnectVirginia Direct Messaging users (i.e., individual and organizational), and external notification to ConnectVirginia Direct Messaging users when they have a message. This new functionality requires that revisions be made to the ConnectVirginia Direct Messaging End User License Agreement and the ConnectVirginia Direct Messaging Policies and Procedures. Steve Gravely, legal counsel for ConnectVirginia, reviewed the revisions

that were made to the ConnectVirginia Direct Messaging End User License Agreement and Policies and Procedures to accommodate the new issues raised by this additional functionality. The Governing Body provided definitive guidance on these issues during the February 17, 2012 ConnectVirginia Governing Body meeting. A summary of these revisions and a redline version of the ConnectVirginia Direct Messaging End User License Agreement and Policies and Procedures can be found in the materials for this Governing Body meeting, which are available on the ConnectVirginia website at <http://www.connectvirginia.org/governance>.

Decision/Outcome: Motions to adopt the revised ConnectVirginia Direct Messaging End User License Agreement and revised Policies and Procedures were made, seconded and approved with no further discussion.

Action/Follow Up: The revised ConnectVirginia Direct Messaging End User License Agreement and Policies and Procedures for Phase II will go into effect when Phase II goes live.

Agenda Topic #7: Discussion of key policy issues for ConnectVirginia Direct Messaging Phase III

Discussion Summary: Phase I of ConnectVirginia Direct Messaging went live on February 17, 2012. This is just the first of three phases of ConnectVirginia Direct Messaging that will be implemented over the next few months. Each subsequent phase will offer additional functionality, which in turn will result in unique policy issues. Phase II of ConnectVirginia Direct Messaging will go live during the 2nd quarter of 2012 and the revised End User License Agreement and Policies and Procedures that address the unique policy issues for this phase were approved earlier in today's meeting.

During Phase III of ConnectVirginia Direct Messaging, ConnectVirginia Direct Messaging users will be able to exchange Direct Messages with users at other health information service providers (HISPs). Ms. McCleaf provided a detailed explanation of how this functionality works and the technology requirements to exchange with other HISPs. Steve Gravely then walked the Governing Body through the specific policy issues raised by these Phase III ConnectVirginia Direct Messaging HISP-to-HISP exchanges.

These policy issues were detailed in a read ahead document provided to the Governing Body in preparation for the meeting and include:

- *Contracting with Other HISPs:* Will ConnectVirginia require other HISPs to sign an agreement before the other HISP can be incorporated into the ConnectVirginia "circle of trust" for purposes of exchanging Direct messages?
- *Approval of HISPs:* What is the process that will be used to approve another HISP as part of ConnectVirginia's "circle of trust"?

- *Permitted Purposes:* For what reasons will ConnectVirginia Direct Messaging Users be able to exchange messages with users in other HISPs that are part of ConnectVirginia's "circle of trust"?
- *Identity Proofing of Users:* What level of user identity proofing will ConnectVirginia require of HISPs that are incorporated into ConnectVirginia's "circle of trust"?
- *Authentication to Direct Service:* What level of user authentication will ConnectVirginia require of HISPs that are incorporated into ConnectVirginia's "circle of trust"?

For each issue referenced above, the Governing Body was presented with a summary of the issue and a recommendation from the ConnectVirginia Management Team on how to address the issue. The Governing Body discussed each of the Management Recommendations in detail in order to fully understand the issue and the recommendation.

The discussion of the recommendations focused on two main issues. First, Management is recommending that each HISP with which ConnectVirginia Direct Messaging will engage in HISP-to-HISP transactions be required to sign ConnectVirginia's HISP-to-HISP Exchange Agreement. The Governing Body discussed whether this requirement would impact the scalability of ConnectVirginia Direct Messaging. The Governing Body recognized that the answer to this question depends in part on the number of HISPs that want to become part of ConnectVirginia's "circle of trust." At this point, given that most HISPs are in their infancy, Management could not predict how many HISPs would want to become part of ConnectVirginia's "circle of trust." Assuming that this would be a significant number, the Governing Body discussed whether it would be possible to create a DURSA-like agreement that can be signed by all HISPs instead of having "point-to-point" agreements between individual HISPs. Steve Gravely explained that the idea of a DURSA-like agreement is the exact opposite of Direct's basic premise as envisioned by those who created Direct. The *Best Practices for HISP-HISP Agreements*, as published on the Direct wiki, states that HISPs do not need to sign agreements for the exchange of Direct messages as long as the HISP has an agreement with the end user and the Direct specifications are implemented correctly. The wiki page does, however, suggest that agreements can be helpful for managing business relationships.

The Governing Body recognized that, currently, there is no "accreditation" body for HISPs that is broadly accepted. This means that ConnectVirginia has no way of knowing which HISPs actually meet the Direct specifications and which have appropriate relationships with their end users. The only way to confirm this is through an agreement where the other HISP represents that these things are true. After much discussion, the Governing Body determined that at least at the beginning other HISPs will have to sign ConnectVirginia's HISP-to-HISP Exchange Agreement in order to become part of ConnectVirginia's "circle of trust." If circumstances change in the future,

the Governing Body will revisit this decision. Additionally, the Governing Body would like for ConnectVirginia to publish its HISP-to-HISP Exchange Agreement in hopes that it will serve as a template that other HISPs can adopt.

The second issue the Governing Body discussed in detail was related to Management's recommendation that other HISPs that will become part of ConnectVirginia's "circle of trust" verify the identity of their users prior to allowing them to use the HISP's services. ConnectVirginia is identity proofing its Individual Primary End Users through the use of in-person notarization of the ConnectVirginia Direct Messaging enrollment form. Management recommended that other HISPs be required to identity proof their users, but did not recommend that the other HISPs do this solely through notarization. Some Governing Body members were concerned that ConnectVirginia was not going to specifically prescribe the method of identity proofing. They felt that this could compromise the security of the HISP-to-HISP transactions. Management explained that some HISPs may have existing relationships with their users that fulfill the identity proofing requirement without the need for a notarized form similar to ConnectVirginia's. After much discussion, the Governing Body decided that it was important that we not create a barrier to adoption by requiring other HISPs to complete a specific method of identity proofing which may not be feasible for them. As long as the other HISP will attest that they perform identity proofing prior to granting Direct credentials to their users and meet ConnectVirginia's other requirements, ConnectVirginia will allow them to become part of our "circle of trust."

Decision/Outcome: After the discussion detailed above, the Governing Body agreed with and adopted Management's recommendations for all of the ConnectVirginia Direct Messaging Phase III issues that were discussed during the meeting. For a more detailed discussion of these issues and the management recommendations, please refer to the ConnectVirginia Direct Messaging Issue Brief for Phase III available as part of the materials for this Governing Body meeting, which are available on the ConnectVirginia website at <http://www.connectvirginia.org/governance>.

Action/Follow Up: The ConnectVirginia Direct Messaging End User License Agreement and Policies and Procedures will be revised to incorporate the policy decisions made by the Governing Body regarding Phase III functionality. Additionally, ConnectVirginia Management will prepare the standard HISP-to-HISP Exchange Agreement that will be signed by other HISPs wishing to become part of ConnectVirginia's "circle of trust." These documents will be presented to the Governing Body for approval during the August 14, 2012 Governing Body meeting.

Agenda Topic #8: Discussion of key policy issues for ConnectVirginia Exchange

Discussion Summary: There are a number of key policy issues that must be addressed by the Governing Body related to ConnectVirginia Exchange. At this meeting and the May meeting, the Governing Body will discuss each of these policy issues and determine

how they will be addressed for ConnectVirginia Exchange. After disposition by the Governing Body, the policy decisions will be memorialized in the ConnectVirginia Exchange Trust Agreement and Policies and Procedures. These documents need to be finalized prior to the first Node going live on ConnectVirginia Exchange, which is expected to occur no later than September 30, 2012.

The Governing Body discussed six of these policy issues during today's meeting. These issues were detailed in a read ahead document provided to the Governing Body in preparation for the meeting and include:

- *Patient Consent Model:* How do we decide whether a patient is "in" or "out"?
- *Permitted Purposes:* For what reasons can ConnectVirginia Exchange be used?
- *Eligibility Criteria for ConnectVirginia Exchange Nodes:* What are the eligibility criteria for an organization to participate as a Node in ConnectVirginia Exchange?
- *Application and Vetting Process for Potential ConnectVirginia Exchange Nodes:* How will applications for participation in ConnectVirginia Exchange be reviewed and what will be the roles of ConnectVirginia Management and Governing Body?
- *Suspension and Termination of Nodes:* Under what circumstances will a Node be suspended or terminated?
- *Dispute Resolution:* How will disputes between ConnectVirginia Exchange and its Nodes or between two or more ConnectVirginia Exchange Nodes be resolved?

For each issue referenced above, the Governing Body was presented with a summary of the issue question and a recommendation from the ConnectVirginia Management Team on how to address this issue. The Governing Body discussed each of the Management Recommendations in detail in order to fully understand the issue and the recommendation.

Patient Consent Model

The Governing Body discussed whether the opt-in approach was the right approach for ConnectVirginia Exchange. The Governing Body's main concerns about the opt-in model were that it would result in low participation and a burden on providers who would be primarily responsible for educating patients on the opt-in and having the opt-in form signed. Despite these concerns, the Governing Body recognized that HITAC spent a significant amount of time evaluating the patient consent model for ConnectVirginia Exchange and determined that opt-in was the best approach. Also, in the current environment where patients desire more control over their health information, an opt-in model is preferable. The Governing Body agreed that this issue can be revisited after ConnectVirginia Exchange has been in production for awhile and has the opportunity to collect real data around opt-in rates and the patients' attitudes toward the electronic exchange of their health information.

Since ConnectVirginia Exchange will be using the opt-in model, the Governing Body stressed the importance of public education to enable the success of the opt-in consent model. Patients need to fully understand what the opt-in process means for how their data will be stored and accessed. The Governing Body believes that if individuals understand how their information will be exchanged through ConnectVirginia Exchange, they will be more likely to opt-in. ConnectVirginia is planning to develop educational materials for patients that can be distributed by providers at the point of care and will be available on the ConnectVirginia website.

The Governing Body also discussed a limited number of exceptions to the opt-in model. Where an exception applies, Nodes in ConnectVirginia Exchange will be able to exchange information even though the patient has not opted-in. Management recommended two exceptions:

- Queries that seek health information about an individual in connection with the treatment of that individual in a medical emergency that poses an immediate threat to the individual's health and requires immediate medical intervention.
- Queries from the Social Security Administration in connection with a determination of eligibility for disability benefits that is accompanied by a signed authorization from the individual who is the subject of the query or his/her personal representative.

The Governing Body supported both of these exceptions. The Governing Body also approved a third exception to allow the Department of Health to query for records on an individual for those public health purposes that are specified in the Virginia Code. Since the Department of Health is statutorily permitted to access their records without the individual's authorization, they should be able to do so through ConnectVirginia Exchange regardless of whether the individual has opted-in.

Finally, the Governing Body discussed whether the opt-in consent form could be submitted by an individual electronically, similar to what is done for the Advanced Health Directive Registry. Management will research the e-signature laws in Virginia to determine whether this is feasible.

Permitted Purposes

The Governing Body discussed the Permitted Purposes for ConnectVirginia Exchange recommended by Management. After clarifying that coordination of care and preventative care fall within the Permitted Purposes, the Governing Body approved Management's recommendation.

Eligibility Criteria for Nodes and Application Review Process

The Governing Body discussed Management's recommendation related to eligibility criteria and the application review process for potential Nodes. The Governing Body approved Management's recommendation, but wanted to clarify that a Node's previous

termination from ConnectVirginia Exchange would not disqualify the Node from re-applying to become a Node again. The previous termination could, however, be considered during the application review process.

Suspension and Termination

During discussion of the suspension and termination process, the Governing Body sought to clarify the role of the Executive Director, the Compliance Committee and the Governing Body in the involuntary suspension process. Management clarified that the Executive Director will have the ability to suspend a node immediately so that any damage can be contained, but this suspension will be limited to 30 days during which time the decision will be reviewed by the Compliance Committee. Given the Executive Director's role in the suspension process, the Governing Body asked Management to develop a succession plan should the Executive Director be unavailable and a situation arises that may require that a Node be suspended. Management will develop this succession plan and share it with the Governing Body in a future meeting.

Dispute Resolution

The Governing Body discussed and adopted Management's recommendation regarding the resolution of disputes between Nodes and disputes between Nodes and ConnectVirginia.

Decision/Outcome: After the discussions detailed above, the Governing Body adopted Management's recommendations for the ConnectVirginia Exchange issues that were discussed during the meeting. For a more detailed discussion of these issues and the management recommendations, please refer to the ConnectVirginia Exchange Issue Briefs for the March 16, 2012 and April 17, 2012 ConnectVirginia Governing Body Meetings available as part of the materials for this Governing Body meeting, which are available on the ConnectVirginia website at <http://www.connectvirginia.org/governance>.

Action/Follow Up: The ConnectVirginia Management Team will do the following:

1. Add a third exception to the Opt-In Exceptions Policy and Procedure to allow the Department of Health to query for records on an individual for those public health purposes that are specified in the Virginia Code;
2. Add previous termination of a Node to the considerations in the eligibility criteria and application review process;
3. Research the ability for individual's to electronically sign and submit the opt-in consent form;
4. Develop a succession plan should the Executive Director be unavailable for an extended period of time; and
5. Memorialize the policy decisions made on these issues in the ConnectVirginia Exchange Trust Agreement and Policies and Procedures which will be presented

for approval by the Governing Body during the July 17, 2012 ConnectVirginia Governing Body meeting.

Agenda Topic #9: Introduction to ConnectVirginia Exchange Fee Structure

Discussion Summary: Ms. McCleaf provided an introduction to the principles from the Strategic and Operations Plan that will govern the development of the fee structure for ConnectVirginia Exchange. ConnectVirginia Management is still determining the specifics around the amount and types of fees that will be charged to Nodes for participation in ConnectVirginia Exchange. A more detailed fee structure will be presented for discussion during the June 27, 2012 ConnectVirginia Governing Body meeting.

Decision/Outcome: N/A

Action/Follow Up: N/A

Agenda Topic #10: Future Business

Discussion Summary: Next month's Governing Body meeting will be on May 15, 2012 from 1:00-5:00 pm at Troutman Sanders, 1001 Haxall Point, Richmond, VA 23219.

Decision/Outcome: N/A

Action/Follow Up: N/A

Agenda Topic #11: Public Comment

Discussion Summary: Opportunity was provided for any observers present to provide public comment. No public comments were made.

Decision/Outcome: N/A

Action/Follow Up: N/A

Agenda Topic #12: Adjournment

Discussion Summary: The Chair asked whether there was any other business the Governing Body wanted to address. No other business was raised.

Decision/Outcome: The Chair adjourned the meeting without objection.

Action/Follow Up: N/A

Terri Ripley, ConnectVirginia Governing Body Secretary