



Opportunity White Paper

# e-Subpoenas: The Key to Health Information Exchanges

*How Electronic Subpoenas are the stealth ingredient for creating a dominating Health Information Exchange platform*

Presented by: Warren Walker

On February 18, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009, setting aside funds to provide monetary rewards for medical practices that implement and use an EMR in a meaningful way.

## White Paper Overview

During the debate on health care reform, the subject of Electronic Medical Records (EMRs) was often mentioned as a mechanism to realize significant cost savings in government funded medical care programs. It is becoming evident that EMRs will eventually have widespread adoption and become the standard of how patient data is stored and shared, which will ultimately lead to greater efficiencies, better patient care, and new innovative technology. If EMRs are the future, what opportunities will result and how can an innovative company get in front of these changes to create new revenue streams?

This White Paper will focus on how a forward thinking organization could create two new innovative services that when combined, would generate a sizable public benefit, significant new recurring revenue streams, and deliver a sustainable competitive advantage. The first project is the creation of a free electronic subpoena platform for use by municipalities and the legal industry in the United States. The second project would entail incorporating the e-subpoena system into a new, revenue generating platform for exchanging medical records used in litigation. The free municipal e-subpoena system would quickly develop a national user base that could be migrated to the newly created revenue generating electronic medical records tollway. By aggregating a large user base with a free e-subpoena system, path dependency is created leading to a defensible position for the fee based platform.

The revenue opportunity for a fee based EMRs request and delivery platform based on the e-subpoena system is significant. Research and interviews with leading companies in the legal industry indicates there are over *90 million* medical records requests each year for evaluating injuries related to lawsuits. The market size for medical records retrieval used in litigation is over *\$2 billion*. The goodwill for creating a free national e-subpoena system is invaluable and could lead to other opportunities. Both benefits will add significant value and revenues to the organization which develops this opportunity and will have far reaching efficiency and cost reduction opportunities for platforms users. The newly created platforms would also create substantial opportunities to offer new revenue generating products and services that could be marketed to the extensive user base in the legal, medical and municipal industries. The two initiatives could allow a company to truly prove the business model of "doing good while doing well".

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According to Louisville Kentucky Police department officials, an estimated 10 percent of the approximately 100,000 paper subpoenas issued in 2010 by the Clerk of the Court to local police officers never reached the intended officer.

— Louisville Courier Journal - December 2010

There are significant challenges to creating a national e-subpoena system and electronic records exchange platform. There are a maddening array of rules, regulations and unofficial policies that guide the creation and dissemination of subpoenas. Various government agencies, municipalities, state legislatures, legal practitioners and law enforcement agencies would have to agree on a set of standards and technology protocols. Creating a national electronic subpoena network and medical records litigation exchange platform could be impossible. However, the various rewards for the company that is successful significantly outweigh the risks.

### Why an Electronic Subpoena System

Subpoenas are documents created by a court to compel testimony or the production of evidence in a legal proceeding. Many of the subpoenas are created to request law enforcement officers to appear in court for cases in which they are involved. Law enforcement subpoenas are printed and delivered to police stations and then given to officers in a process that could take several days.

It is understandable how a paper subpoena results in lost documents, ignored summons and inefficiency. Court cases are negatively affected if a subpoena is lost resulting in the officer failing to appear in court. Sergeant David Mutchler, the Louisville Kentucky police department's court liaison, estimated in a recent interview that about 10 percent of the more than 100,000 subpoenas issued annually to its officers arrive late, or not at all. An officer missing a court case causes a postponement, and at worst results in dismissal on a felony case.

Dozens of cities such as Dallas, Miami, New Orleans and El Paso have developed law enforcement e-subpoena systems. The most cited reason for creating an e-subpoena system is to increase the efficiency in the legal system. During the 2010 launch of an e-subpoena platform in Louisville Kentucky, Mayor Jerry Abramson stated "This e-subpoena program will bring the system into the 21st Century. It will help eliminate many time-consuming, expensive steps for the court systems and agencies that use it." The Louisville system cost \$480,000 to develop and was funded by a federal grant.

The main impediment to more cities creating an e-subpoena solution is not in recognizing the benefits of the system, it is

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“At one time, there were over 100 medical records retrieval companies in Houston, TX alone. Houston is where the industry really began.”

— Ramsey Evans, Keais Records Service Inc.

the cost to develop, install and maintain a proprietary system. Cities, within the same state that independently develop proprietary e-subpoena systems result in duplicated development costs, massive compatibility issues and logistical problems. Even if a city identified clear benefits for an e-subpoena system, many are facing such significant budget shortfalls they would most likely not even be able to afford a feasibility study without federal assistance.

The challenges municipalities face provides an opportunity and business case for the creation of a national e-subpoena system. If a system was developed and offered to the municipalities for free, it is reasonable to assume most would adopt it as their standard even if it did not exactly match the current procedures for subpoenas. It is not unreasonable, given the urgent need to realize cost savings, that cities would adjust their procedures and regulations to fit a free e-subpoena service.

### Retrieving Medical Records in Litigation

The two main potential users for an EMR exchange platform in this paper are the requestors of records and the custodians. The largest requestors are lawyers who need to review medical records in relation to a legal case and life insurance companies to evaluate applicants. Custodians, such as hospitals, doctor's offices and pharmacies, are the original creators and current holders of the records.

In a personal injury, malpractice or mass tort case, requesting copies of medical records is critical considering the case usually cannot proceed without them. For example, if a customer in Chicago claims to be injured while shopping at Home Depot and files a personal injury lawsuit; both attorneys would need copies of all relevant medical records to understand the merit of the claim. The plaintiff could complete a release authorization, but if they are unwilling, a subpoena for the records would be drafted.

If the same lawyer also needed medical records from Miami and Dallas and various other cities, they would need to contact several hospitals, pharmacists, dentists and doctors' offices in each city to get the necessary records. Significant delays are often encountered by law offices because it usually takes multiple follow-up phone calls faxes or e-mails to remind a facility to send the requested records. Multiply this situation by dozens of cases in one law firm and it is appar-

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HealthPort, the largest release of information (ROI) provider, serves over 10,000 healthcare facilities and 44,000 physicians and fulfills over a *million* medical records requests every month.

— HealthPort.com - January 2011

ent there are significant personnel, resources and expense involved in retrieving medical records used in litigation. The other risk an attorney accepts if they retrieve medical records is the trouble they face if they fail to find records that are relevant to a case. An attorney could easily put a defendant at a disadvantage if they failed to locate a medical record that could have led to a dismissal of the case or mitigation of the damages.

The complexity, risk and difficulty described above leads attorneys and other records requestors to outsource medical records retrieval. There are hundreds of companies in the U.S. that comprise a \$2 billion industry focused only on retrieving medical records used in litigation. Companies in this industry retrieve various types of records from custodians and provide other value-added services. Fees in the industry range from \$8.00 for a raw unprocessed medical record to over a hundred dollars for an organized, bates stamped, OCR processed and summarized record. Some of the larger players in the industry are MediConnect, Keais, Compex and U.S. Legal.

Records custodians such as large hospital systems and pharmacies can receive hundreds of requests for records each month. According to the Medical Group Management Association, there are over 164,000 medical practices and 8,000 hospitals in the U.S. Many hospitals have dedicated personnel to handle the requests since all states have laws mandating the time in which request must be fulfilled. To offset the costs of processing requests, custodians are allowed to charge a fee that is set by each state based on page count and other criteria.

Many hospitals have outsourced the processing and delivery of medical records requests to companies called Request of Information Providers (ROIs). The ROIs take a percentage of the authorized fee in exchange for searching for, copying and mailing the records to the party that made the request. The largest ROI company in the industry is MedSave based in Atlanta, GA.

Lawsuits are not the only reason why medical records are requested. Medical records are often required for insurance applications, employment screening, application for state and federal benefits, military service requests and fraud investigations. In addition to medical records, subpoenas and written authorizations are also used to secure copies of other

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If a covered entity maintains records electronically, patients may instruct that the records be made available electronically; to anyone the patient designates.

— U.S. Department of Health & Human Services

records such as employment and pay history, social security, Medicare, federal tax and telephone records.

### Creating the e-Subpoena System

The initial phase of developing the integrated platform would be the creation of a national e-subpoena system developed for cities and municipalities and legal representatives. The developing company could announce the intention to create this free system and ask selected cities to provide input to structure the specifications. This announcement would also serve notice to cities considering developing a platform that a free alternative will be available. In addition, cities with existing systems could evaluate transitioning to the free platform to save on future maintenance and support costs for their platform.

A study could also be initiated to examine the platforms developed by the several cities that have adopted e-subpoenas and quickly get an understanding of what features and capabilities are necessary to meet the needs of end users. The new system could draw upon the best practices and expand upon these systems to create a more robust web-based platform. Once this system was created and adopted by a significant number of cities, it is probable that enough momentum would be created toward a tipping point where the system would effectively become the national platform for e-subpoena delivery.

### Building a Medical Records Tollway

The second phase focuses on building upon the e-subpoena platform success and momentum by extending the functionality to become the system in which medical records used in litigation are requested and delivered electronically.

In a very general description of the system, every user from the hospitals, pharmacies and doctors offices to the lawyers, insurance companies and government agencies are pre-verified and issued an encryption key. When a verified user generates and transmits an e-Subpoena on the system, it is automatically authenticated and accepted by the hospital as a valid subpoena backed request. The hospital, upon receiving the e-subpoena, would allow the system to search their EMRs to determine if there is a patient record at that facility. If a record is found that matches the criteria, it is encrypted and sent through the system to the lawyer who then decrypts it. The hospital would not need to take any action, expend any

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*Tobacco Litigation:*

Each individual state filed suit against each of the top six tobacco companies in state court.

To settle the suits the six largest tobacco companies entered into a joint settlement in 1998 with an agreement to pay \$206 billion over the next 25 years.

— *CNBC.com* - 2010

resources or involve any staff to fulfill the records request. The state mandated fee for the medical records would be calculated and collected from the requestor's registered payment method and sent to the custodian.

To address public concern about the tollway's operator aggregating medical information, protections could be implemented so the medical records are encrypted while in transit between the hospital and lawyer. The company operating the system would never have the necessary key to decrypt the medical record and thus, the inability to access the information. If the subject of the record decided to deposit those records into a electronic health records account, the requestor could transfer the electronic record into that person's account if instructed.

Hospitals and other records custodians would readily embrace the system considering it converts medical records requests from an expense into a profit center. The ability to outsource the processing of requests with no action or resources required by the custodian is a compelling value proposition. Once the system is established, the incremental cost of fulfilling a records request by a hospital is basically zero, resulting in increased captured revenue from the records copy fee by the custodian.

### **How a Free System Generates Billions of Dollars**

It would be a tremendous benefit to states and cities if someone created a free electronic subpoena system. The service would strengthen information sharing relationships with cities and states creating goodwill for the systems creator and opportunities for other business relationships. The extension of the free municipal e-subpoena system to a tollway for medical records delivery creates multiple diverse revenue streams and a very defensible position.

The hundreds of medical records retrieval companies are currently generating in excess of \$2 billion dollars in revenues annually but the potential total market size is actually much larger considering not every requestor of records currently outsources this function. The new records retrieval platform could very quickly capture much of the existing revenue and expand the market by converting self-providers to outsourcing due to the speed and cost at which the new platform could deliver records.

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“On average 80% of records are received in less than a month. The remaining 20%, would include records such as government records, which on average take 45 days to retrieve.”

— MedSave USA

It is possible to add features and benefits to the system to increase utility, usability and revenues. For example, when an individual initiates a lawsuit making a claim for a back injury they are asked about previous injuries and a list of all the doctors and hospitals they visited in the past. As one can imagine, the plaintiff often “forgets” to mention the instance in which they fell off the ladder three years ago and went to the hospital in another city they used to live in. The new platform could easily add physician and prescription finder services that would alert defense attorneys to information that exists, but was not disclosed that can mitigate a claim. The prescription and doctor’s finder’s technology for aggregating data already exist and could be seamlessly integrated with the new system. It is possible to partner with other service providers to offer medical records summaries, organization and scoring and evaluation. In a mass tort case with thousands of claimants, the ability to score each claimant injuries against a pre-set list of case criteria and prioritize those cases would be a tremendous benefit to law firms. The ability to score life insurance applications based on criteria provided by the underwriters could cut evaluation time and expense.

Custodians such as hospitals, doctor’s offices and pharmacies are the original creators of medical records, and many partner with ROI service providers and share the state regulated records request fee. ROI companies have employees that operate in the hospital to make physical copies of records and mail/fax/e-mail them to the requestors in a process which adds cost, and deprive the hospitals of a possible revenue stream. By displacing the existing ROI companies, the company that develops this opportunity could share the state required copying fee with the custodians and everyone benefits.

The records requestor and custodians are only two examples of sources of revenue that exist today that could be captured by the new platform. Many other significant revenue streams could exist such as data mining, electronic records storage and custom medical search technology. By creating a free public system and a subsequent fee based service, an innovative company could create a new significant revenue source, a significant foothold in the healthcare industry and a platform to introduce additional products and services. If the new system could deliver medical records in a matter of minutes, they would revolutionize the records retrieval industry and potentially capture billions in existing revenues.

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“We deliver in excess of over 40,000 records per month. We produced over 500,000 records to our clients on annual basis.”

— MedSave USA

## Conclusion

This White Paper outlines a case for a company to develop a major new initiative focused on creating technology to disrupt existing business models and inefficient practices. Current conditions in the medical and legal community indicate there will be a high level of interest and adoption of the new platform. Many cities' current budget woes prevent them from investing in an e-subpoena system even though they can realize considerable cost savings and improved criminal case outcomes. There are enough cities without an e-subpoena service that would adopt the new solution to create a de facto national standard.

Hospitals are experiencing a technological surge with the implementation of EMRs systems and are looking for new solutions to increase efficiency and cut costs. The tollway platform could increase hospital revenues from medical records and simultaneously decrease operating costs. Once a company establishes itself in the healthcare industry at the provider level, other significant opportunities will develop to extend and monetize the relationship.

Attorneys would have many reasons to readily adopt a new platform. It would be possible to deliver records significantly faster, with greater prospects of getting undisclosed records and in a format easily integrated into legal practice software. Attorneys would be familiar with the tollway platform through their use of the free municipal e-subpoena service and would feel comfortable with the technology for records retrieval. Insurance companies would be able to realize greater efficiencies and cost reductions by quickly being able to evaluate insurance applications and process new policies.

There are multi-billion dollar revenues streams that exist now that someone could capture with this initiative. The existing industry players are vulnerable to new technology introductions and have limited capacity within their organizations to compete. The existing outsourced medical records retrieval companies and ROI service providers are either not large enough, possess the forward looking strategy or capable of aggregating the technological and financial resources to develop a national medical records exchange platform to challenge a this initiative.

This paper mentioned earlier that this whole concept may be impossible at this time. Differing city and state laws, varying

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technology platforms in the medical community and federal HIPAA laws all combine to make this idea challenging. These issues represent a serious hurdle to the successful implementation of an e-subpoena system.

Only a few companies have the human capital, technology, financial resources and forward looking vision to successfully realize this opportunity. Even if a company only developed the e-subpoena network now, the system would be worth a significant sum once another company developed the tollway and wanted the e-subpoena network to create a defensible advantage.

### **About the Author**

Most recently Mr. Walker was the Director of Strategy for Keais Records Service Inc. Keais, based in Houston, TX, and is one of the largest and oldest medical records retrieval providers in the United States. In this role, Mr. Walker had the opportunity to meet with end user law firms, hospital administrators and the senior executives of other retrieval companies. Through these interactions, the author has developed a thorough understanding of the records retrieval industry and its use of subpoenas.

Among several previous positions, Mr. Walker was a Strategy Consultant with The Boston Consulting Group and AT Kearney. As a consultant, Mr. Walker worked with a number of Fortune 100 companies helping them think through strategic challenges and develop innovative solutions.

Mr. Walker received an MBA from the University of Chicago Booth School of Business, with a concentration in Strategic Management and completed his undergraduate studies at Florida A&M University. Mr. Walker currently resides in Houston, Texas.

Warren Walker  
817-401-2238 (p)  
wwalker@intellous.com