

INTRASTATE AND INTERSTATE CONSENT POLICY OPTIONS COLLABORATIVE

APPENDIX B: COMPARATIVE SUMMARY ANALYSIS EMERGENCY DEPARTMENT

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Health Information Security & Privacy

COLLABORATION



Committee

Privacy—Consent for Sharing Emergency Department Information

Issue

Patient consent to exchange laboratory information through a health information exchange (HIE) for treatment. This issue analysis will examine how the consent options will affect clinician and laboratory business processes, public perception, and legal liabilities of all parties involved.

Background

Currently, consent is not required for sharing some prescription and laboratory information among health care providers/payers under HIPAA and California law.

Assumptions

- Treating physician and various providers (labs, pharmacies, other physicians) can have an electronic data exchange relationship without being a participant in the HIE.
- Sharing clinical information will be used for treatment.
- Technology is able to carry out policy and requirements.
- This analysis excludes health information protected by specific laws limiting access to information such as, but not limited to, HIV, mental health, genetic, drug and alcohol, minors, sexually transmitted diseases, and family planning.
- Patient education/informing are required for all options.
- Consent alternative was chosen by patient at previous annual visit.
- The quality of care will not be less than that provided in the current systems. However, for those patients that choose to not participate in the HIE, the quality of their care may not improve due to the increased availability of information.
- For purpose of this analysis:
 - *No Consent*—this choice will result in the *most* information being available to the physician, thus potentially providing a better quality of care. However, this option may result in (1) less data being available because patients choose not to seek care, or (2) less accurate information being available because patients provide incorrect information.
 - *Opt In with Restrictions*—this choice will result in the least information being available to the physician.
 - *Opt Out*— this choice will result in *more* information being available because all patient information will be in the system except for those patients who choose to opt out.
 - *Opt In*—this choice will result in less information being available since patients will need to take an action to be included in the system.

- *Opt Out with Exceptions*—this choice will result in *some* information being available because patient information will be in the system—except for those patients who choose to opt out and the information patients choose to exclude.

Notes

- **Consent**—A patient’s informed decision to provide permission for their personal health information to be entered and exchanged in an electronic health information exchange system.
- **Legend**—+ (plus sign) is equivalent to a pro statement, – (minus sign) is equivalent to a con statement, and a • (bullet) is equivalent to a neutral statement.

Table B-1A. Patient—Quality of Care

Specific Issue: Patient wants effective treatment balanced with protection of their information.

No Consent	Opt Out (Patient Auto IN)	Opt In w/Restrictions (Patient Auto OUT Plus Choice)	Opt Out w/Exceptions (Patient Auto IN Plus Choice)	Opt In (Patient Auto OUT)
+ Most quality of care. Patient receives effective, appropriate treatment, avoids unnecessary risk. Expediting referrals increases quality of care. Scarce resources are available when needed.	+ More quality of care (portion IN the HIE)	– Least quality of care (portion not IN the HIE); patient receives unnecessary treatment that over-utilizes scarce resources. Unsafe situation if cath lab is unavailable to someone who really needs that treatment.	<ul style="list-style-type: none"> • Some quality of care (portion not IN the HIE) + More patient choice specificity 	– Less quality of care (portion not IN the HIE) – Less patient choice (IN or OUT)
+ Has the most patient participation	<ul style="list-style-type: none"> • Has the potential for more patient participation • For patients who do not opt out 	– Has the potential for the least patient participation. <ul style="list-style-type: none"> • For patients who do not opt in • For patients who choose to restrict significant information 	<ul style="list-style-type: none"> • Has the potential for some patient participation • For patients who do not opt out • For patients who choose to restrict significant information 	<ul style="list-style-type: none"> • Has the potential for lesser patient participation • For patients who do not opt in
NA	NA	NA	NA	NA
– No patient choice	<ul style="list-style-type: none"> • Some patient choice (OUT or IN) 	+ Most patient choice and specificity in choice	NA	NA

Note: Quality of care based upon availability of information—outcome, informed decisions, coordination of alerts, and continuity of care (specialist to general practitioner, relocation, or disaster).

Table B-1B. Provider—Quality of Care

Specific Issue: Provider wants to deliver effective treatment in the most efficient and cost-effective way.

No Consent	Opt Out (Patient Auto IN)	Opt In w/Restrictions (Patient Auto OUT Plus Choice)	Opt Out w/Exceptions (Patient Auto IN Plus Choice)	Opt In (Patient Auto OUT)
+ Most quality of care	+ More quality of care (portion IN)	– Least quality of care (portion not IN)	• Some quality of care (portion IN)	– Less quality of care (portion not IN)
+ Most cost-effective	• Somewhat cost-effective	– Least cost-effective	– Least cost-effective	– Less cost-effective
– Most safeguards required to protect patient information due to volume information	• Some safeguards required to protect patient information due to volume	+ Least safeguards required to protect patient information due to volume	+ Fewest safeguards required to protect patient information due to volume	• Less safeguards required to protect patient information due to lesser volume
+ Fewest safeguards required to protect patient information due to lack of complexity	• Some safeguards required to protect patient information due to complexity	– Most safeguards required to protect patient information due to complexity	– Most safeguards required to protect patient information due to complexity	• Some safeguards required to protect patient information due to lack of complexity

Note: Quality of care based upon availability of information—outcome, informed decisions, coordination of alerts, and continuity of care (specialist to general practitioner, relocation, or disaster).

Table B-2A. Patient—Level of Trust: HIE

Specific Issue: Patient wants to be informed and know that the provider and HIE will provide accurate information for treatment and will safeguard information.¹ (Trust the HIE and health care providers regarding protection of their information.)

No Consent	Opt Out (Patient Auto IN)	Opt In w/Restrictions (Patient Auto OUT Plus Choice)	Opt Out w/Exceptions (Patient Auto IN Plus Choice)	Opt In (Patient Auto OUT)
+ Least need for education due to complexity	+ Lesser need for education due to complexity	– Most need for education due to complexity	– Most need for education due to complexity	• More need for education due to complexity and availability
– No patient choice, low trust	• Some degree of patient choice/trust	+ Most patient choice/trust	+ Most patient choice/trust	+ More patient choice/trust
+ Least potential errors due to volume of information	• Some potential errors due to volume of information	– Most potential errors due to least volume of information and complexity	– Most potential errors due to less volume of information and complexity	– More potential errors due to volume of information
– Most need to protect patient information due to volume	• Less need to protect patient information due to volume	+ Least need to protect patient information due to volume	• Some need to protect patient information due to volume	• Some need to protect patient information due to volume
+ Least need to protect patient information due to complexity	• Some need to protect patient information due to complexity	– Most need to protect patient information due to complexity	– Most need to protect patient information due to complexity	• Lesser need to protect patient information due to complexity

Note: Level of trust in HIE—influenced by patient choice (whether information is exchanged and if so, what information is exchanged and by whom), efforts to inform and educate, safeguard patient information, ability to provide extra protections of sensitive information. [Errors amplified as carried forward through HIE. Increased professional responsibility.] This analysis excludes health information protected by specific laws limiting access to information such as, but not limited to, HIV, mental health, genetic, drug, and alcohol, minors, sexually transmitted diseases, and family planning.

¹ A considerable level of education will be needed for all alternatives; however, some alternatives will require more extensive education due to their complexity.

Table B-2B. Provider—Level of Trust: HIE

Specific Issue: Provider wants other provider in HIE to safeguard information and provide accurate and complete information.¹ (Trust between providers)

No Consent	Opt Out (Patient Auto IN)	Opt In w/Restrictions (Patient Auto OUT Plus Choice)	Opt Out w/Exceptions (Patient Auto IN Plus Choice)	Opt In (Patient Auto OUT)
+ Least potential errors due to volume	+ Less potential errors somewhat due to volume	– Most potential errors due to volume and complexity	– Most potential errors due to complexity and somewhat due to volume	– More potential errors due to volume
– Most need to protect patient information due to volume	– More need to protect patient information due to volume	+ Least need to protect patient information due to volume	• Medium need to protect patient information due to volume	+ Less need to protect patient information due to volume
+ Least need to protect patient information due to complexity	+ Less need to protect patient information due to complexity	– Most need to protect patient information due to complexity	– Most need to protect patient information due to complexity	+ Less need to protect patient information due to complexity
+ Least need for staff and patient education due to complexity	• Some need for staff and patient education	– Most need for staff and patient education	– Most need for staff and patient education	– More need for staff and patient education

Note: Level of trust in HIE—influenced by patient choice (whether information is exchanged and if so, what information is exchanged and to whom), efforts to inform and educate, safeguard patient information, ability to provide extra protections of sensitive information² [Errors amplified as carried forward through HIE. Increased professional responsibility.]

¹ A considerable level of education will be needed for all alternatives; however, some alternatives will require more extensive education due to their complexity.

² This analysis excludes health information protected by specific laws limiting access to information such as, but not limited to, HIV, mental health, genetic, drug and alcohol, minors, sexually transmitted diseases, and family planning.

Table B-3A. Savings and Cost Avoidance

Specific Issue: Savings and cost avoidance—provider business processes improved; ease of integration, less paperwork, improved communication, reduced duplicative tests, increased accuracy and effectiveness, long-term savings, better quality of care, quicker reimbursements, accessing payer information for claims and eligibility.

Risk analysis—could affect a small number of cases, but if the adverse outcome is death, etc., it could have a costly outcome.

No Consent	Opt Out (Patient Auto IN)	Opt In w/Restrictions (Patient Auto OUT Plus Choice)	Opt Out w/Exceptions (Patient Auto IN Plus Choice)	Opt In (Patient Auto OUT)
+ Most savings from business processes impacts due to volume and complexity. Costs are appropriate and minimal.	+ More savings from business processes impact due to volume and complexity	– Over-utilizes scarce and expensive resources of helicopter and cardiac cath lab	– Least savings from business processes impact due to volume and complexity	• Less savings from business processes impact due to volume and complexity
+ Most savings from access to complete information, payments, increased accuracy and quality of care	+ More savings from access to complete information, payments, increased accuracy and quality of care	– Least savings from access to complete information, payments, increased accuracy and quality of care	– Least savings from access to complete information, payments, increased accuracy and quality of care	– Less savings from access to complete information, payments, increased accuracy and quality of care
– Most cost to educate due to volume	– More cost to educate due to volume	+ Least cost to educate due to volume	+ Least cost to educate due to volume	• Some cost to educate due to volume
+ Least cost to educate due to complexity	• Some cost to educate due to complexity	– Most cost to educate due to complexity	– Most cost to educate due to complexity	– More cost to educate due to complexity and outreach
NA	NA	– Least savings from business processes impact due to volume and complexity	NA	NA

Table B-3B. Investment

Specific Issue: Provider business process improvement expenses and time for technical upgrades, tech support, maintenance, oversight, complexity of implementation, education and notices, inputting and managing patient consent choices (ongoing): (1) cost of enforcement effort (design and implementation); (2) second process for those patients not participating in exchange or for sensitive information; (3) sustainability and success of HIE system affected by the percentage of participating patients and providers.

No Consent	Opt Out (Patient Auto IN)	Opt In w/Restrictions (Patient Auto OUT Plus Choice)	Opt Out w/Exceptions (Patient Auto IN Plus Choice)	Opt In (Patient Auto OUT)
<ul style="list-style-type: none"> + Least cost of process improvement - Most cost to address sensitive information—requires secondary process 	<ul style="list-style-type: none"> • Lesser cost of process improvement - Most cost to address sensitive information—requires secondary process 	<ul style="list-style-type: none"> - Most cost of process improvement + Least cost to address sensitive information as no secondary process needed since option has the capability to exclude 	<ul style="list-style-type: none"> - Most cost of process improvement + Least cost to address sensitive information as no secondary process needed since option has the capability to exclude 	<ul style="list-style-type: none"> • More cost of process improvement - Most cost to address sensitive information—requires secondary process
<ul style="list-style-type: none"> + Most sustainable 	<ul style="list-style-type: none"> + More sustainable 	<ul style="list-style-type: none"> - Least sustainable 	<ul style="list-style-type: none"> - Less sustainable 	<ul style="list-style-type: none"> • Somewhat sustainable

Table B-4. Technology

Specific Issue: Technology—compatibility, integration and complexity. Size of entity affects the ease of integrating the technology. Technology compatibility equally challenging due to lack of identification of data elements and standard code sets.

No Consent	Opt Out (Patient Auto IN)	Opt In w/Restrictions (Patient Auto OUT Plus Choice)	Opt Out w/Exceptions (Patient Auto IN Plus Choice)	Opt In (Patient Auto OUT)
+ Least complex	• Somewhat complex	– Most complex	– Most complex	– More complex
+ Least challenge to small practice providers	• Some challenge to small practice providers	– Most challenge to small practice providers	– Most challenge to small practice providers	• More challenge to small practice providers

Table B-5. National Efforts

No Consent	Opt Out (Patient Auto IN)	Opt In w/Restrictions (Patient Auto OUT Plus Choice)	Opt Out w/Exceptions (Patient Auto IN Plus Choice)	Opt In (Patient Auto OUT)
NA	NA	NA	NA	NA
NA	NA	NA	NA	NA

Table B-6. Liability and Laws

No Consent	Opt Out (Patient Auto IN)	Opt In w/Restrictions (Patient Auto OUT Plus Choice)	Opt Out w/Exceptions (Patient Auto IN Plus Choice)	Opt In (Patient Auto OUT)
Some legal risk due to patient’s right to privacy under CA Constitution	Less legal risk due to patient’s right to privacy under CA Constitution	Less legal risk due to patient’s right to privacy under CA Constitution.	Less legal risk due to patient’s right to privacy under CA Constitution.	Less legal risk due to patient’s right to privacy under CA Constitution.

Table B-7. CalPSAB Principles

Specific Issue: Consistency or inconsistency with the CalPSAB principles: (1) openness, (2) health information quality, (3) individual participation, (4) collection limitation, (5) use limitation, (6) purpose limitation, (7) security safeguards—NA, and (8) accountability—NA.

No Consent	Opt Out (Patient Auto IN)	Opt In w/Restrictions (Patient Auto OUT Plus Choice)	Opt Out w/Exceptions (Patient Auto IN Plus Choice)	Opt In (Patient Auto OUT)
+ Consistent with health information quality	+ Consistent with health information quality	+ Consistent with: <ul style="list-style-type: none"> • openness • individual participation • collection limitation • use limitation • purpose limitation 	+ Consistent with: <ul style="list-style-type: none"> • openness • individual participation • collection limitation • use limitation • purpose limitation 	+ Consistent with: <ul style="list-style-type: none"> • openness • individual participation • collection limitation • use limitation • purpose limitation
- Inconsistent with: <ul style="list-style-type: none"> • openness • individual participation • collection limitation • use limitation • purpose limitation 	- Inconsistent with: <ul style="list-style-type: none"> • openness • individual participation • collection limitation • use limitation • purpose limitation 	- Inconsistent with health information quality	- Inconsistent with health information quality	- Inconsistent with health information quality

Table B-8. Summary

No Consent	Opt Out (Patient Auto IN)	Opt In w/Restrictions (Patient Auto OUT Plus Choice)	Opt Out w/Exceptions (Patient Auto IN Plus Choice)	Opt In (Patient Auto OUT)
+ Most quality of care	+ More quality of care	- Least quality of care	• Some quality of care	- Less quality of care
+ Least costly/most sustainable	+ Less costly/most sustainable	- Most costly/most sustainable	- Most costly/most sustainable	• More costly/most sustainable
• Some legal risk	+ Less legal risk	+ Less legal risk	+ Less legal risk	+ Less legal risk
- Inconsistent with CalPSAB principles	+ Consistent with CalPSAB principles	+ Consistent with CalPSAB principles	+ Consistent with CalPSAB principles	+ Consistent with CalPSAB principles
- Least patient choice	• Some patient choice	+ Most patient choice	+ Most patient choice	+ More patient choice