INTRASTATE AND INTERSTATE CONSENT POLICY OPTIONS COLLABORATIVE

APPENDIX C:
COMPARATIVE SUMMARY ANALYSIS
E-PRESCRIBING

March 2009

Committee

Privacy Committee—Patient Consent for Sharing Health Information for e-Prescribing

Issue

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

Background

Currently, consent is not required for sharing some medication history among health care providers/payers under HIPAA and California law. Current e-prescribing in California under the Pharmacy Board regulations only allows transmission of a prescription and any other information required by law to a pharmacist of the patient's choice.

Assumptions

- Treating physician and a pharmacy can have an electronic data exchange relationship without being a participant in the HIE.
- Sharing medication information will be limited to 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 purposes of this analysis, the following definitions are provided:
  - *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 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 with Restrictions*—this choice will result in the *least* information being available to the physician.

- *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.
- *Opt In*—this choice will result in *less* information being available because patients will need to take an action to be included in the system.

Notes

- **E-Prescribing—**The transmission, using electronic media, of prescription or prescription-related information between a prescriber, dispenser, pharmacy benefit manager, or health plan, either directly or through an intermediary, including an e-prescribing network. E-prescribing includes, but is not limited to, two-way transmissions between the point of care and the dispenser.
- **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 C-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)
– Lack of choice may result in less patient participation	+ More patient participation	• Some patient participation	– Has the potential for the some patient participation	– Has the potential for the least patient participation for patients who do not opt in.
– No patient choice over use or exchange of records	• Some patient choice	+ Most patient choice	+ More patient choice specificity	– Less patient choice—in or out
– Patients may choose to not seek care	NA	+ Most specificity in choice	NA	NA
– Patients may choose to withhold information	NA	NA	NA	NA
– Patients may choose to provide erroneous information	NA	NA	NA	NA
– Potential for less quality of care for those who choose to not participate	• Has the potential for more quality of care for patients who do not opt out.	– Least quality of care • Has potential for least patient participation for patients who do not opt in • For patients who choose to restrict significant information	• Some quality of care • For patients who do not opt out. • For patients who choose to restrict significant information	– Less quality of care
– Potential for poor information integrity	NA	+ Better information integrity	NA	NA
+ Decreased risk of harm due to errors in prescriptions.	NA	NA	NA	NA
+ Decreased risk of drug and allergy interactions due to better coordination of patient alerts.	NA	NA	NA	NA

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

Table C-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	• Has the potential for more quality of care for patients who do not opt out.	– Least quality of care (portion not IN) • For patients who do not opt in. • For patients who choose to restrict significant information	• Some quality of care • For patients who do not opt out. • For patients who choose to restrict significant information	– Less quality of care
+ Most patient participation	+ More patient participation	– Has the potential for the least patient participation	• Has the potential for the some patient participation.	– Has the potential for the less patient participation for patients who do not opt 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 most volume of information	• Some safeguards required to protect patient information due to volume	+ Fewest safeguards required to protect patient information due to least volume	+ Least safeguards required to protect patient information due to least volume	– Less safeguards required to protect patient information due to less volume
+ Fewest safeguards required to protect patient information due to lack of complexity	– Less safeguards required to protect patient information due to less complexity	– Most safeguards required to protect patient information due to most complexity	– Most safeguards required to protect patient information due to most complexity	– Less safeguards required to protect patient information due to less complexity
+ Facilitates communications between physicians and pharmacists	+ Facilitates more communications between physicians and pharmacists	NA	NA	NA
+ Most availability to information in relocation or disaster situations	+ Most availability to information in relocation or disaster situations	NA	NA	NA

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

Table C-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.

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 drug errors due to most volume of information	− Less potential drug errors due to more volume of information	− Most potential drug errors due to least volume of information and complexity	• Some potential drug errors due to less volume of information and complexity	− More potential drug errors due to less volume of information
− No patient choice, least trust	• Less patient choice and trust—no control over sensitive information	+ Most patient choice and trust	+ Most patient choice and trust	+ More patient choice and trust
− Most need to protect patient information due to most volume	− Less need to protect patient information due to less volume	+ Least need to protect patient information due to least 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 least complexity	• Some need to protect patient information due to complexity	− Most need to protect patient information due to most complexity	NA	+ Less need to protect patient information due to less complexity
+ Least need for education due to complexity	+ Less need for education due to less complexity	− Most need for education due to complexity	NA	• More need for education due to more complexity
− May not be available for non-HIE pharmacies	− May not be available for non-HIE pharmacies	− May not be available for non-HIE pharmacies	− May not be available for non-HIE pharmacies	− May not be available for non-HIE pharmacies
− Concern about system failures and no prescription fills.	− Concern about system failures and no prescription fills	− Concern about system failures and no prescription fills	− Concern about system failures and no prescription fills	− Concern about system failures and no prescription fills
− Decreased patient/provider trust relationship due to no choice	+ Increased patient/provider trust relationship due to choice	NA	NA	NA

Note: Level of trust in HIE—influenced by patient choice (whether info is exchanged and if so, what info is exchanged and to whom), efforts to inform and educate, safeguard patient information, ability to provide extra protections of sensitive information.

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

Specific Issue: Provider wants other provider in HIE to safeguard information and provide accurate and complete 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 potential drug errors due to most volume	+ Less potential drug errors due to more volume	– Most potential drug errors due to least volume	– Most potential drug errors due to least volume	– More potential drug errors due to less volume
– Most need to protect patient information due to most volume	– More need to protect patient information due to more volume	+ Least need to protect patient information due to least volume	+ Less need to protect patient information due to less volume	+ Less need to protect patient information due to less volume
+ Least need to protect patient information due to least complexity	+ Less need to protect patient information due to less complexity	– Most need to protect patient information due to most complexity	– More need to protect patient information due to More complexity	+ Less need to protect patient information due to less complexity
+ Least need for staff and patient education due to least complexity	+ Less need for staff and patient education due to less complexity	– Most need for staff and patient education due to most complexity	– Most need for staff and patient education due to most complexity	+ Less need for staff and patient education due to less complexity
NA	+ Increased patient/provider trust relationship	NA	NA	NA

Note: Level of trust in HIE—influenced by patient choice (whether info is exchanged and if so, what info is exchanged and to whom), efforts to inform and educate, safeguard patient information, ability to provide extra protections of sensitive information.

Table C-3A. Savings and Cost Avoidance

Specific Issue: Provider business processes improved; ease of integration, less paperwork, improved communication, reduced duplicative tests and harmful drug interactions and drug shopping, increased accuracy and effectiveness, long- term savings, better quality of care, quicker reimbursements, accessing payer info for claims and eligibility.

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 most volume and least complexity	+ More savings from business processes impact due to more volume and less complexity	– Least savings from business processes Impact due to least volume and most complexity	– Least savings from business processes impact due to least volume and most complexity	• Less savings from business processes impact due to less volume and less 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 most volume	– More cost to educate due to more volume	+ Least cost to educate due to least volume	+ Least cost to educate due to least volume	• Some cost to educate due to volume
+ Least cost to educate due to least complexity	• Some cost to educate due to some complexity	– Most cost to educate due to most complexity	– Most cost to educate due to most complexity	– More cost to educate due to some complexity and outreach

Table C-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 choice (ongoing). (1) Cost of enforcement effort (design and implementation). (2) Secondary process for those patients not participating in exchange or for sensitive info. (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)
+ Least cost of process improvement	• Less cost of process improvement	– Most cost of process improvement	– Most cost of process improvement	• More cost of process improvement
– Most cost to address sensitive information—requires secondary process	– Most cost to address sensitive information—requires secondary process	+ Least cost to address sensitive information as no secondary process needed since option has the capability to exclude	+ Least cost to address sensitive information as no secondary process needed since option has the capability to exclude	– Most cost to address sensitive information—requires secondary process
+ Most sustainable	+ More sustainable	– Least sustainable	– Less sustainable	• Somewhat sustainable
+ Most ease of workflow integration	NA	NA	NA	NA
+ Least liability due to reduced errors and clinical decision support	NA	NA	NA	NA
+ Least paperwork, phone calls for office staff	NA	NA	NA	NA
+ Most likely to reduce drug abuse from fraudulent prescriptions	NA	NA	NA	NA

Table C-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
+ Least difficult to implement for technical support and maintenance	NA	NA	NA	NA
– Increased potential for breaches if not safeguarded	NA	NA	NA	NA
– May have problems integrating with current systems	NA	NA	NA	NA

Table C-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

Note: Markle—Connecting for Health and the NCVHS—National Commission on Vital & Health Statistics address patient consent to access their information, not patient consent to control the input of their information into an HIE or for exchange.

Table C-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 C-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, (8) accountability

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 consistent with: • health information quality	+ More consistent with: • health information quality	+ Most consistent with: • openness • individual participation • collection limitation • use limitation • purpose limitation	+ Most consistent with: • openness • individual participation • collection limitation • use limitation • purpose limitation	+ More consistent with: • openness • individual participation • collection limitation • use limitation • purpose limitation
– Least consistent with: • openness • individual participation • collection limitation • use limitation • purpose limitation	– Less consistent with: • openness • individual participation • collection limitation • use limitation • purpose limitation	– Least consistent with • health information quality	– Least consistent with • health information quality	– Least consistent with • health information quality

Table C-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	– Diminished quality of care	• Some quality of care	– Less quality of care
+ Least costly/most sustainable	+ Less costly/more sustainable	– Most costly/least sustainable	– More costly/less sustainable	– Somewhat costly/less 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	+ More patient choice	• Some patient choice
+ Most likely to reduce adverse drug reactions	+ More likely to reduce adverse drug reactions	– Least likely to reduce adverse drug reactions	– Less likely to reduce adverse drug reactions	– Least likely to reduce adverse drug reactions
+ Most likely to detect drug shopping	+ More likely to detect drug shopping	– Least likely to detect drug shopping	– Less likely to detect drug shopping	– Least likely to detect drug shopping