

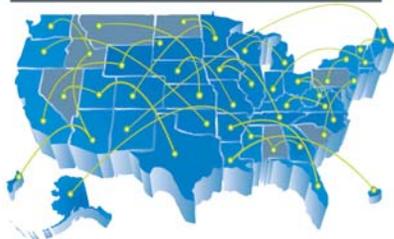
INTRASTATE AND INTERSTATE CONSENT POLICY OPTIONS COLLABORATIVE

APPENDIX F: COMPARATIVE ANALYSIS LABORATORY

March 2009

Health Information Security & Privacy

COLLABORATION



Committee

HISPC Consent Policy Options Workgroup and NCHICA HIE Council's Policy Development Committee

Scenario One

Client consent to exchange mental health information through an HIE for treatment, specifically for e-prescribing and laboratory exchanges. This issue analysis will examine how the consent/permission options will affect client, clinician, business processes, public perception, and legal liabilities of all parties involved.

Assumptions

- The scenario involves exchange of health information contained in electronic health records (EHRs) that conform to nationally recognized standards and that can be created, managed, and consulted by authorized providers and staff both within health care organizations and across more than one health care organization.
- The scenario involves health care providers who are recognized as separate health care organizations.
- All of the requesting and responding providers in the scenario exchange health information with each other but are not necessarily participants in an HIO.
- If given a choice, the consumer is consenting to having some or all of her health information be collected and stored in an EHR that conforms to nationally recognized standards and that can be created, managed, and consulted by authorized providers and staff both within health care organizations and across more than one health care organization.
- In the case of Opt In with Restrictions and Opt Out with Exceptions, health information that is protected by specific laws limiting access to the information, such as HIV-positive status or test results, mental health or substance abuse information, either will be excepted from (carved out of) the EHR or restricted by the consumer.
- The providers will comply with mandatory reporting laws.
- The purpose of the exchange of health information is for treatment.
- Technology is able to carry out the requirements of the consent options.

Instructions

List the most significant pros and cons with respect to the impact each of the five (5) consent policy options is likely to have on health care costs and quality of care, the business processes of the health care providers, consumer and provider trust in HIE, and legal liabilities of parties involved.

Table F-1. Definitions

Specific Issue	No Choice	Opt Out	Opt In with Restrictions	Opt Out with Exceptions	Opt In
Definitions	<p>Auto In. Consumer’s health information is automatically placed into an interoperable EHR without the consumer’s prior permission and regardless of consumer preferences. Assumes that all of the consumer’s health information, except as otherwise prohibited by law, will be accessible across more than one health organization.</p>	<p>Auto In with Choice. Consumer’s health information is automatically placed into an interoperable EHR without the consumer’s prior permission. Assumes that all of the consumer’s health information, except as otherwise prohibited by law, will be accessible across more than one health organization <i>unless and until the consumer chooses to opt out.</i></p>	<p>Auto Out with Granular Choice. Consumer’s health information is not automatically placed into an interoperable EHR without the consumer’s prior permission. Assumes that none of the consumer’s health information will be accessible across more than one health organization <i>unless and until the consumer opts in.</i> In addition, consumers may specify (i) who may access their EHR; (ii) for what purposes the EHR may or may not be accessed; and/or (iii) what specific information may be placed in their EHR.</p>	<p>Auto In with Granular Choice. Consumer’s health information is automatically placed into an interoperable EHR without the consumer’s prior permission. Assumes that all of the consumer’s health information, except as otherwise prohibited by law, will be accessible across more than one health organization <i>unless and until the consumer chooses to opt out.</i> In addition, consumers may specify: (i) who may access their EHR; (ii) for what purposes their EHR may or may not be accessed; and/or (iii) what specific health information may be placed in their EHR.</p>	<p>Auto Out with Choice. Consumer’s health information is not automatically placed into an interoperable EHR without the consumer’s prior permission. Assumes that none of the consumer’s health information will be accessible across more than one health organization <i>unless and until the consumer opts in.</i></p>

Table F-2. Quality of Care

Specific Issues	No Choice	Opt Out	Opt In with Restrictions	Opt Out with Exceptions	Opt In
<p>Consumer wants effective treatment balanced with protection of his or her health information.</p> <p>Physician wants access to accurate and complete records to make informed decisions and provide cost-effective treatment.</p> <p>Laboratory wants to efficiently perform tests and provide accurate results in the most cost-effective way.</p> <p>Quality of care in this scenario is measured by the availability of the consumer’s medical history relevant to the lab test requested and that the ordering physician is able to compare the results of the test with the results of previous tests.</p>	<p>+ High quality of care due to maximum participation and access to needed information</p> <p>- No choice over collection and use of health information may deter consumers from accessing health care providers; failure to seek preventive care or coordinated care</p>	<p>+ More potential for quality of care due to expected volume</p> <p>+ Offers consumers who would otherwise not seek treatment due to privacy concerns an option to opt out of HIE</p> <p>- Less quality of care than no choice due to smaller volume of records available to the provider</p>	<p>+ This option provides consumers with maximum control over disclosure and use of their health information.</p> <p>- Because this option provides consumers with the most control over whether their health information is available for HIE, this option is likely to result in low volume.</p> <p>- Most potential for duplication and errors due to complexity and potential for low volume</p>	<p>+ Because this consent option provides consumers with the ability to restrict access to some, but not all of their health information, consumers will be less likely to opt out, resulting in increases participation and relatively higher volume of records available for exchange—thus meeting the consumer’s need for choice while reducing risk of duplication and adverse events.</p> <p>- Consumers may choose to restrict access to needed health information, increasing the risk of errors and need for duplication of tests, etc.</p>	<p>- Less potential for quality of care benefits when compared with no choice and opt out consent alternatives because the default is that the health information is not placed in an EHR and is not available for HIE, resulting in less volume of records and need to duplicated tests, etc.</p>

Note: + = pro; - = con.

Table F-3. Business Practice Impact

Specific Issues	No Choice	Opt Out	Opt In with Restrictions	Opt Out with Exceptions	Opt In
<p>Providers want HIE to improve business processes by reducing redundancy, paperwork, and reimbursement turnaround time.</p> <p>Providers will avoid adopting consent options that require secondary processes to accommodate consumer choice.</p>	<ul style="list-style-type: none"> + Least complex + Most efficient + Least need for consumer education - Maximum participation and volume of records; thus, the impact on business process with respect to managing and safeguarding the information is significant - Need for business process to protect information that requires consent under state and federal law. 	<ul style="list-style-type: none"> + Least complex of the choice options - More complex than no consent - Requires a consent management system 	<ul style="list-style-type: none"> - Most potential for business impact due to complexity - Most need for consumer and stakeholder education 	<ul style="list-style-type: none"> - Complex to implement and to monitor for compliance - Consumer education need 	<ul style="list-style-type: none"> + Less business impact than no choice and opt out due to lower volume of records available for HIE due to default that the records are not placed in an EHR - Greater emphasis must be placed on education of the consumer with respect to the benefits of HIE and the consequences of not choosing to opt in

Note: + = pro; - = con.

Table F-4. Public Confidence—Trust in HIE

Specific Issues	No Choice	Opt Out	Opt In with Restrictions	Opt Out with Exceptions	Opt In
<p>Consumers want transparency. They want to be informed about HIE policies and practices and be assured that their health care providers and or the eHIO will abide by principles that limit the use and disclosure of their health information, and will comply with laws, regulations, standards and policies that protect the consumer’s health information.</p> <p>Providers want providers who have access to their client’s EHRs to safeguard the information they collect, store or use and only ensure that their clients EHRs contain health information that is accurate, up to date, complete and relevant to the purpose for which it is to be used.</p> <p>Public trust in HIE is dependent on the establishment and maintenance of trust relationships with consumers and among participating providers.</p>	<p>+ Providers: Maximum trust due to maximum participation and volume of records; no choice option offers the least risk of duplication and errors than the other alternatives</p> <p>- Consumer: Least trust due to no choice</p>	<p>+ Consumer may opt out of HIE, thus more potential for consumer confidence and trust in HIE</p> <p>- Provider: Less volume of records available than no choice so less trust in HIE due to less potential for access to complete and accurate records</p>	<p>+ Most trust due to most consumer choice</p> <p>- Least trust among providers due to least access to complete records; most duplication; and most complexity</p>	<p>+ This consent option allows consumers a better alternative to opt out only because if a consumer wants to deny HIE access to some, but not all of their health information, this option will accommodate them.</p> <p>- Because this option allows more consumer choice and control over the electronic disclosure of their health information, the provider may not have access to the consumer’s complete record—thus decreasing the provider’s confidence in HIE.</p>	<p>+ Assuming that consumers are sufficiently informed about HIE, they are more likely to trust HIE if they are given the choice as to whether they wish to participate.</p> <p>- Because of the high potential for low participation and low volume of records, provider confidence in HIE is likely to be low.</p>

Note: + = pro; - = con.

Table F-5. Health Care Cost Avoidance

Specific Issues	No Choice	Opt Out	Opt In with Restrictions	Opt Out with Exceptions	Opt In
<p>Providers and consumers want long-term savings and lower costs due to less paper work, improved communication, reduced duplicative tests and improved consumer safety.</p> <p>Providers want value from their investments in technology and cost-effective mechanisms to manage consent, safeguard information and educated consumers.</p>	<p>+ Least risk of duplication and errors</p> <p>+ Most savings from access to complete information and payment and eligibility information</p> <p>+ Least complex, so least cost per consumer to educate</p> <p>- Most total cost to educate due to volume</p> <p>- Most cost to implement a system to identify and protect confidential information to comply with state and federal laws requiring consent</p>	<p>+ Opt out is the least complex of the choice alternatives</p> <p>+ Default is that records are available, so most volume compared to other choice alternatives</p> <p>- Less cost savings potential than no choice due to less participation and volume of records available to providers</p> <p>- More complex so more cost to educate consumers and providers</p>	<p>- Least cost savings due to potential for least volume and most complexity</p>	<p>- More costly due to complexity and low volume of records available for exchange</p>	<p>- Less cost-effectiveness due to less volume and increased complexity (less access to complete records, more duplication, more time lags regarding reimbursement and eligibility determinations)</p> <p>- Need for secondary system to protect confidential health information of consumers who opt in</p> <p>- More cost to educate consumers</p>

Note: + = pro; - = con.

Table F-6. Liability and Laws

Specific Issue	No Choice	Opt Out	Opt In with Restrictions	Opt Out with Exceptions	Opt In
Liability and laws	<ul style="list-style-type: none"> - Most risk of liability due to potential for noncompliance with state and federal consent laws 	-	<ul style="list-style-type: none"> + Because consumers must permit the electronic disclosure of their health information, the risk of legal liability for violation of state and federal consent laws is low. 	<ul style="list-style-type: none"> + Less risk of liability for failure to comply with state and federal laws that require written consent for disclosure because system will allow the consumer to specifically consent to the placement of the protected health information in an EHR and available for HIE. - The complexity of the consent option increases risk of error. 	<ul style="list-style-type: none"> + Since consumer permission is required to participate in HIE, the risk of liability for failure to comply with mandatory consent laws is much less.

Note: + = pro; - = con.