

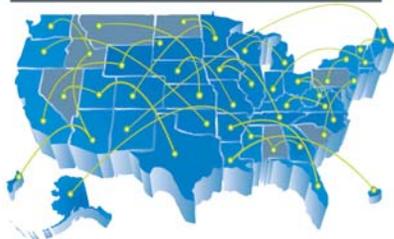
INTRASTATE AND INTERSTATE CONSENT POLICY OPTIONS COLLABORATIVE

APPENDIX H: 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 Five

Consumer, a 50-year-old male claiming depression due to marital separation, visits psychiatrist in private practice. Psychiatrist prescribes antidepressant for consumer and refers consumer to outpatient substance abuse counselor, asking that counselor confirm consumer's appearance for treatment and provide psychiatrist with periodic updates of consumer's progress in treatment. The health information shared includes records pertaining to the consumer's mental health and substance abuse history.

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 to 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 H-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 H-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>+ Maximum access to needed information should:</p> <ul style="list-style-type: none"> • improve quality of care • decrease risk of harm due to errors • decrease liability <p>– No choice over who may use and exchange records may deter consumers from seeking treatment, especially where sensitive information is concerned.</p>	<p>+ More potential for improved quality of care due to higher expected volume than opt in option because default is to allow HIE</p> <p>+ Offers consumers who would otherwise not seek treatment due to privacy concerns control over whether their health information will be available for HIE</p> <p>– More potential for poor quality of care if the requesting provider does not have electronic access to the consumer’s health information because the consumer opted out of HIE</p>	<p>+ This option provides consumer with maximum control over disclosure and use of their health information.</p> <p>– Because this option provides consumers with the most choice, this option is likely to result in lower volume of records available to requesting providers, resulting in greater potential for duplication and errors.</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 more 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 to 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 H-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>	<p>Psychiatrist:</p> <ul style="list-style-type: none"> - Maximizes ease and efficiency of making referrals, sharing health information that supports continuity of care + Less paperwork/fewer calls - Maximizes burden to assure patients that their health information is protected from unauthorized use - Requires consumer's authorization if will share psychotherapy notes - Requires more staff training/policies - Requires more consumer education 	<ul style="list-style-type: none"> + Compared with other consent options, "opt out" is the least complex - Would require consumer education program - This consent option is more complex than no choice. - Requires provider to implement a consent management system - Provider not likely to benefit from HIE to the extent consumers 	<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 - Consumer education need 	<ul style="list-style-type: none"> + Less business impact than no choice and opt out due to less volume of records available for HIE due to default is 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.

(continued)

Table H-3. Business Practice Impact (continued)

Specific Issues	No Choice	Opt Out	Opt In with Restrictions	Opt Out with Exceptions	Opt In
NA	<p>Outpatient substance abuse counselor:</p> <ul style="list-style-type: none"> + Maximizes ease and efficiency of responding to requests to share consumer health information with psychiatrist. - Will be in violation of federal substance abuse laws unless specific written consumer consent for most releases is obtained - Must include notice about redisclosure each time substance abuse information is released 	NA	NA	NA	NA

Note: + = pro; - = con.

Table H-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>+ Perception of public trust is dependent on the establishment and maintenance of trust relationships with consumers and among participating providers.</p> <p>- Consumers’ perception of lack of right to privacy can lead to low trust levels and possible refusal to seek treatment or participate in HIO.</p>	<p>+ Offering the consumer the choice to opt out is likely to encourage more consumers to participate and build confidence and trust in HIE.</p> <p>- Because there is likely to be less participation and thus a lower volume of records available for HIE, the completeness and accuracy of records available for exchange will be less than no choice, resulting in less confidence and trust in HIE among providers and consumers.</p>	<p>+ Highest level of trust in HIE due to maximum consumer choice regarding participation</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 that.</p> <p>+ Because this option allows consumers more choice and control over the electronic disclosure of their health information, they will be more likely to participate.</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 H-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 paperwork, 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>+ Allows for appropriate referral to outpatient substance abuse counselor</p> <p>- If consumer avoids seeking treatment for depression or substance abuse due to concerns about limited rights to privacy, the consumer's health status may deteriorate, leading to higher costs, or the consumer may become suicidal.</p>	<p>+ Because the opt out consent option is the least complex of the consent options, it is likely to be the least expensive to implement.</p> <p>- Opt out consent option will likely result in less participation and thus less volume of records available for HIE, resulting in less potential in cost savings when compared to no choice.</p> <p>- Providers will need to invest in consumer education programs to inform consumers about the benefits of HIE and the consequences of their choice.</p> <p>+ Because the default is that health records are available for HIE, this option is likely to result the highest level of volume than other consent options—resulting in higher cost savings due to reductions in paper work and redundancy.</p>	<p>- Least cost savings due to potential for least volume and maximum complexity and maximum need for consumer education</p>	<p>- More costly due to complexity and low volume of records available for exchange</p>	<p>NA</p>

Note: + = pro; - = con.

Table H-6. Liability and Laws

Specific Issues	No Choice	Opt Out	Opt In with Restrictions	Opt Out with Exceptions	Opt In
Liability and laws	<ul style="list-style-type: none"> + Mental health information may be provided to substance abuse counselor and back to psychiatrist (NCGS § 122C-55). - Likely violates federal substance abuse laws unless client’s written permission to release information back to treating psychiatrist is obtained (42 CFR §§ 2.1, 2.2). - Prohibition on re-disclosure of substance abuse information (42 CFR § 2.32) - Psychotherapy notes may not be released without patient authorization or court order (45 CFR § 164.508(a)(2)). 	NA	<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.