

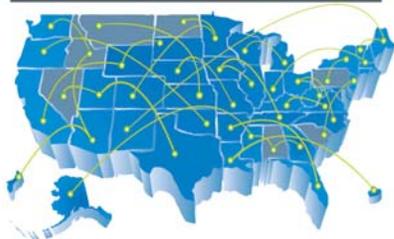
INTRASTATE AND INTERSTATE CONSENT POLICY OPTIONS COLLABORATIVE

APPENDIX I: COMPARATIVE ANALYSIS MINOR SEEKING STD TESTING

March 2009

Health Information Security & Privacy

COLLABORATION



Committee

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

Scenario One

Patient is a 17-year-old female who visits her school health clinic and informs the nurse that she fears she may have a sexually transmitted disease. School nurse refers student to private practice physician for testing and provides student with samples of birth control pills and condoms. Physician examines student, orders tests, and determines that student has urinary tract and yeast infections. Physician prescribes medication to treat conditions. The student would be providing permission to allow her health information to be entered into an interoperable electronic health record that will be accessible to authorized providers and their staff within a single health care organization as well as across multiple health care organizations.

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 I-1. Definitions

Specific Issue	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/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 I-2. Quality of Care

Specific Issues	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/Exceptions	Opt In
<p>Minor wants effective treatment and accurate records balanced with protection against unauthorized access to her health information (in particular, she doesn't want parents to know she is sexually active).</p> <p>Providers want to deliver effective treatment in the most timely and efficient way and to encourage consumer to seek treatment.</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 • Maximize ability to provide continuity of care and coordination of care for appropriate treatment of infections and preventive care for minor <p>- No choice over who may use and exchange records may deter minors in this situation from seeking treatment, especially where sensitive information is concerned</p> <p>- Alternatively, minors may not be truthful with providers if they know their information can be released without their consent.</p>	<p>+ Greater potential to improve quality of care due to higher expected volume of records than opt in option, because most people probably won't opt out</p> <p>+ Likely to have relatively complete and accurate information</p> <p>+ Due to amount and accuracy of information, fewer duplicative tests and medication errors</p> <p>- Somewhat lower volume of records available to providers because some consumers will choose to opt out</p> <p>- Some consumers may avoid seeking treatment</p> <p>- These may result in some increase in duplicate tests and medication errors.</p>	<p>+ Because this option provides consumers with the ability to restrict access to some but not all of their health information, consumers may be less likely to opt out, resulting in increased participation and relatively greater volume of records available for exchange.</p> <p>+ Relatively complete and accurate information</p> <p>+ Fewer duplicate tests and medication errors than with non-granular options</p> <p>- Likely somewhat lower volume of records available to providers through HIE because some consumers still will choose to opt out for certain records</p> <p>- Lower quality of care for those consumers who do restrict access to some or all of their information</p> <p>- Potential for higher number of duplicate tests/medication errors for those restricting information</p>	<p>+ Because this 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 increased participation and relatively greater volume of records available for exchange.</p> <p>+ Relatively complete and accurate information</p> <p>+ Fewer duplicate tests and medication errors than with non-granular options</p> <p>- Likely somewhat lower volume of records available to providers through HIE because some consumers still will choose to opt out for certain records</p> <p>- If consumers choose to restrict access to needed health information, risk of increased errors and duplication of tests, etc.</p>	<p>+ Relatively high participation likely due to choice, leading to somewhat more information available to providers and higher quality of care than for more granular consent options</p> <p>- Less potential for increased quality of care when compared to no choice and opt out</p> <p>- Likely lower volume of records, greater duplicate tests and medication errors</p>

Note: + = pro; - = con.

Table I-3. Business Practice Impact

Specific Issues	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/Exceptions	Opt In
<p>Providers want HIE system that minimizes changes in workflow, minimizes investments in technology, decreases paperwork and administrative burdens, and results in quicker reimbursement.</p> <p>Payers want HIE system that provides them with comprehensive information regarding care for which they are paying; decreased costs of care.</p>	<p>School health clinic:</p> <ul style="list-style-type: none"> + Maximizes ease and efficiency of making referrals and sharing health information with private practice physician (which supports continuity of care) + Less paperwork/fewer calls + No change in process of obtaining consent, so less money needed for education <p>Physician:</p> <ul style="list-style-type: none"> + Maximizes ease and efficiency of responding to requests to share consumer health information with school health clinic in follow-up, if necessary, and prescribing to pharmacy electronically + Less paperwork/fewer calls + No change in process of obtaining consent, so less money needed for education <p>Pharmacy:</p> <ul style="list-style-type: none"> + Maximizes ease of filing claim for insurance and getting paid for prescription 	<ul style="list-style-type: none"> + The least complex of the options that permit consent, so fairly easy to administer - More burdensome to administer than no choice - Would need to maintain separate records for consumers who opt out - Would require consumer and staff education program about the consent option, which would increase costs to providers 	<ul style="list-style-type: none"> + Because more sophisticated technology is required, security of information may be greater. - Complex technology increases cost of technology. - Complex consent options require greater staff and consumer education, as does fact that information cannot be exchanged unless consumer opts in. 	<ul style="list-style-type: none"> + Because more sophisticated technology is required, security of information may be greater. - Complex technology increases cost of technology. - Complex consent options require greater staff and consumer education. 	<ul style="list-style-type: none"> + Still fairly easy and inexpensive to administer due to low complexity of consent option - Greater need to educate both staff and consumers regarding the benefits of HIE and the consequences of not choosing to opt in - Such education will be more time consuming and costly.

(continued)

Table I-3. Business Practice Impact (continued)

Specific Issues	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/Exceptions	Opt In
NA	<ul style="list-style-type: none"> + If e-prescribing used, improves likelihood of accurate filling and limits likelihood of prescription being a forgery <p>Insurer:</p> <ul style="list-style-type: none"> + Maximizes ease of obtaining needed health information to ensure appropriate level of care provided + If consumer refuses care due to perceived lack of privacy, insurer saves money. <p>School health clinic:</p> <ul style="list-style-type: none"> - Maximizes burden to assure consumers that their health information is protected from unauthorized use here. Is clinic required to know and advise consumer that referral to physician may result in consumer's information being shared with parents if parents ask physician? <p>Physician:</p> <ul style="list-style-type: none"> - Does physician have obligation to advise consumer that if consumer pays for visit with parents' insurance card, parents may be provided information if they ask? 	NA	NA	NA	NA

(continued)

Table I-3. Business Practice Impact (continued)

Specific Issues	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/Exceptions	Opt In
NA	<ul style="list-style-type: none"> - Physician office may need policy on how it will address this issue. <p>Pharmacy:</p> <ul style="list-style-type: none"> - Same as physician and school health clinic? 	NA	NA	NA	NA

Note: + = pro; - = con.

Table I-4. Public Confidence—Trust in HIE

Specific Issues	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/Exceptions	Opt In
<p>Consumers want to be informed about the policies and practices of the HIO and to trust that the HIO will abide by principles that limit the use and disclosure of their health information; will take extra precautions for sensitive information; and will comply with laws, regulations, standards, and policies that protect consumers' health information.</p> <p>Providers want other providers participating in the HIO to safeguard information and share information that is accurate, complete, and relevant to the purpose for which it is to be used.</p>	<p>+ Providers and payers are more likely to trust in HIE if they obtain what they consider all necessary information in order to provide or pay for care.</p> <p>- Consumer's perception of lack of right to privacy is likely to lead to low trust levels and possible refusal to seek treatment, give providers accurate and complete information, or participate in HIO.</p>	<p>+ Offering the consumer the choice to opt out likely will encourage more consumers to participate and build confidence and trust in HIE.</p> <p>- Because there is likely to be less consumer participation and thus less volume of records than with no choice option, records are likely to be somewhat less complete and accurate than if no choice, resulting in less confidence and trust in HIE among providers.</p>	<p>+ This option provides consumers with maximum control over uses and disclosures of their health information and, accordingly, is likely to result in highest consumer level of trust in HIE.</p> <p>- Due to possibility of least access to complete records, this option may result in least trust among providers.</p>	<p>+ Because this option allows more consumer choice and control over the electronic disclosure of their health information, there is a greater likelihood of consumer confidence and participation in HIE.</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, so provider's confidence in HIE likely will decrease.</p>	<p>+ More likely to increase consumer confidence since no information is exchanged unless consumers opt in.</p> <p>- Because of potential for lower consumer participation and lower volume of records, provider confidence in HIE is likely to be somewhat lower than for no choice or opt out.</p>

Note: + = pro; - = con.

Table I-5. Savings/Health Care Cost Avoidance

Specific Issues	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/Exceptions	Opt In
Providers, payers, and consumers want less paperwork, improved communication, fewer duplicate tests, increased accuracy and effectiveness of diagnosis and treatment, and long-term savings.	<ul style="list-style-type: none"> + Exchange of information allows for appropriate referral to ob/gyn, avoids duplication of tests, and increases likelihood that consumer receives effective care. - If consumer avoids seeking medical care from school clinic or physician or filling prescription due to concern about limited right to privacy, the consumer's health status may deteriorate and she may fail to use birth control, leading to higher costs. 	<ul style="list-style-type: none"> + Because the opt out consent option is the least complex of the consent options, it is likely to be the least expensive to implement. - Opt out consent option will likely result in less participation and thus lower volume of records available for HIE, resulting in less potential in cost savings when compared to no choice. - Providers will need to invest in consumer education programs to inform consumers about the benefits of HIE and the consequences of their choice. + Because the default is that health records are available for HIE, this option is likely to result in a higher level of volume than other consent options, resulting in higher cost savings due to reductions in paperwork and redundancy. 	<ul style="list-style-type: none"> - Least cost savings may be available due to potential for least volume of records available, maximum complexity of consent option, and maximum need for staff and consumer education. 	<ul style="list-style-type: none"> - More costly due to complexity and low volume of records available for exchange. 	NA

Note: + = pro; - = con.

Table I-6. Liability and Laws

Specific Issues	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/Exceptions	Opt In
Liability and laws	<ul style="list-style-type: none"> + NCGS 90-21.4(a), 90-21.5 (Minors may consent to prevention, diagnosis, and treatment for venereal disease, and physicians can't be held liable for providing such services without obtaining the minor's parents' consent.) - No choice results in a maximum perceived threat to consumer's right to privacy. - NCGS 90-21.4(b) ("If a parent . . .contacts the physician concerning the treatment or medical services being provided to the minor, the physician may give information.") So how does physician office or pharmacy respond to call from parents, if parents indicate they will not pay for treatment unless physician informs them of reason for minor's visit? 	<ul style="list-style-type: none"> + Less risk of liability for failure to comply with state and federal release of information laws because consumers can consent to or withhold consent for release of sensitive information. + Somewhat lower volume of information in the EHR may lead to slightly less risk of malpractice liability than no choice option, because providers can only be held accountable to know information in their possession. + Less complex consent option may decrease the risk of inappropriate release of information. 	<ul style="list-style-type: none"> + Because consumers must permit the electronic disclosure of any of their health information, the risk of legal liability for violation of state and federal release of information laws is perhaps the lowest of all the consent options. + Possibly the smallest volume of information in the EHR may lead to the least risk of malpractice liability, because providers can only be held accountable to know information in their possession. - The complexity of this consent option may increase the risk of inappropriate release of information. 	<ul style="list-style-type: none"> + Less risk of liability for failure to comply with state and federal release of information laws because consumers can consent to or withhold consent for release of sensitive information + Somewhat lower volume of information in the EHR may lead to slightly less risk of malpractice liability than no choice option, because providers can only be held accountable to know information in their possession. - The complexity of this consent option may increase the risk of inappropriate release of information. 	<ul style="list-style-type: none"> + Less risk of liability for failure to comply with state and federal release of information laws because consumers can consent to or withhold consent for release of sensitive information + Somewhat lower volume of information in the EHR may lead to slightly less risk of malpractice liability than no choice or opt out options, because providers can only be held accountable to know information in their possession. + Less complex consent option may decrease the risk of inappropriate release of information.

Note: + = pro; - = con.