

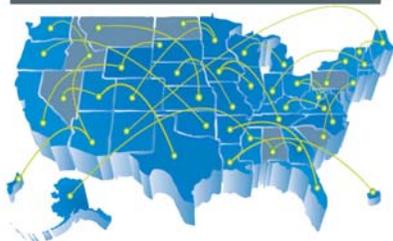
INTRASTATE AND INTERSTATE CONSENT POLICY OPTIONS COLLABORATIVE

APPENDIX D: COMPARATIVE SUMMARY ANALYSIS MENTAL HEALTH

March 2009

Health Information Security & Privacy

COLLABORATION



Committee

PRIVACY—Client consent to exchange mental health information through a health information exchange (HIE) in a clinic setting

Issue

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.

Background

Client consent currently is not required for sharing some information among health care providers to effectuate treatment and referrals for treatment under California law. However, client consent must be obtained for any other disclosures to providers who are not employed at a facility and who do not have medical or psychological responsibility for the client's care.

Assumptions

- This analysis is specific to health information protected by mental health laws which includes provisions limiting access to such information. This analysis does not address other similar protected health information such as HIV, genetic, drug and alcohol, minors, sexually transmitted diseases, and family planning.
- This analysis applies to Lanterman-Petris-Short (LPS) covered entities.
- In addition to other laws, Welfare and Institutions Code (WIC) section 5328 et. seq. governs authorizations for release of mental health information in certain settings.
- Treating physician and a pharmacy can have an electronic data exchange relationship without being a participant in the HIE.
- Sharing laboratory and medication information is limited to treatment.
- Technology is able to carry out policy and requirements.
- Consent alternative was chosen by client at a previous annual visit.
- The quality of care will not be less than that provided in the current systems. However, for those clients 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 a better quality of care. However, this option may result in less data being available due to clients choosing not to seek care or less accurate information being available due to clients providing incorrect information.

- *Opt Out*—this choice will result in *more* information being available, as all client information will be in the system except for those clients choosing 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 in the system for those clients that have opted out, but selected to “except” certain medical information, which will remain in the HIE.
- *Opt In*—this choice will result in *less* information being available since clients will need to take an action to be included in the system.

Notes

- **Preferred Terms**—Clients/consumers rather than patient.
- **Client Philosophy**—Client prefers to manage and control his/her mental health information and may not wish to have the information shared.
- **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 client’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 D-1. Client-Public Acceptance/Social Drivers

Specific Issue	No Consent	Opt Out (Client Auto IN)	Opt In w/Restrictions (Client Auto OUT Plus Choice)	Opt Out w/Exceptions (Client Auto IN Plus Choice)	Opt In (Client Auto OUT)
Client-public acceptance/ social drivers	<ul style="list-style-type: none"> - Least acceptance 1. Most client discomfort due to the sensitivity of client information 2. No client control over information 3. Historically, perception of mental health information being protected 4. Long history of stigma and apprehension of being treated differently 5. Clients may not understand implications 6. May result in clients not seeking needed treatments 7. May result in clients withholding important medical information 	<ul style="list-style-type: none"> - Less acceptance 1. Some client discomfort due to the sensitivity of client information 2. Some client control over information 3. More favorable if client opts out because information is protected 4. Impact on emergency room if don't have the client information 	<ul style="list-style-type: none"> + Most acceptance 1. Least client discomfort due to the sensitivity of client information 2. Most client control over information 3. Potential discrimination consequences from providers if system reflects restrictions based on mental health 	<ul style="list-style-type: none"> • Somewhat likely to have public acceptance 1. Least client discomfort due to the sensitivity of client information 2. More client control over information 3. Potential discrimination consequences from providers if system reflects restrictions based on mental health 	<ul style="list-style-type: none"> + More acceptance 1. Some client discomfort due to the sensitivity of client information 2. Some client control over information 3. Not likely to be accepted by clients; too black and white 4. Client fear that once information is in, cannot remove it

Table D-2. CalPSAB Principles

Specific Issues	No Consent	Opt Out (Client Auto IN)	Opt In w/Restrictions (Client Auto OUT Plus Choice)	Opt Out w/Exceptions (Client Auto IN Plus Choice)	Opt In (Client Auto OUT)
Consistency or inconsistency with the CalPSAB principles:	+ Most consistent with:	+ More consistent with:	+ Most consistent with:	+ Most consistent with:	+ More consistent with:
1. Openness	<ul style="list-style-type: none"> health information quality 	<ul style="list-style-type: none"> health information quality 	<ul style="list-style-type: none"> openness 	<ul style="list-style-type: none"> openness 	<ul style="list-style-type: none"> openness
2. Health information quality	- Least consistent with:	- Less consistent with:	<ul style="list-style-type: none"> individual participation collection limitation use limitation purpose limitation 	<ul style="list-style-type: none"> individual participation collection limitation use limitation purpose limitation 	<ul style="list-style-type: none"> individual participation collection limitation use limitation purpose limitation
3. Individual participation	<ul style="list-style-type: none"> openness individual participation collection limitation 	<ul style="list-style-type: none"> openness individual participation collection limitation 	- Least consistent with:	- Least consistent with:	- Least consistent with:
4. Collection limitation	<ul style="list-style-type: none"> use limitation purpose limitation 	<ul style="list-style-type: none"> use limitation purpose limitation 	<ul style="list-style-type: none"> health information quality 	<ul style="list-style-type: none"> health information quality 	<ul style="list-style-type: none"> health information quality
5. Use limitation					
6. Purpose limitation					
7. Security safeguards					
8. Accountability					

Table D-3. Quality of Care

Specific Issue	No Consent	Opt Out (Client Auto IN)	Opt In w/Restrictions (Client Auto OUT Plus Choice)	Opt Out w/Exceptions (Client Auto IN Plus Choice)	Opt In (Client Auto OUT)
Provider wants to deliver effective treatment in the most efficient way.	<p>+ Most quality of care</p> <ol style="list-style-type: none"> 1. Most information available for treatment 2. Most participation 3. Least negative drug interactions 4. Least opportunity for drug shopping 5. Least duplicate laboratory testing 6. Least conducive to information being available during relocations or disasters <p>– Most safeguards required to protect client information due to most volume of information</p> <p>– Most mental health providers (psychiatrist and psychologists) prefer options that meet client approval</p> <p>+ Least complex safeguards required to protect client information due to lack of complexity</p>	<p>+ More quality of care</p> <ol style="list-style-type: none"> 1. More information available for treatment 2. Less participation 3. Less negative drug interactions 4. Less opportunity for drug shopping 5. Less duplicate laboratory testing 6. More conducive to information being available during relocation and disaster <p>– More safeguards required to protect client information due to more volume of information</p> <p>– Mental health providers (psychiatrist and psychologists) prefer options that meet client approval</p> <p>+ Less complex safeguards required to protect client information due to less complexity</p>	<p>– Least quality of care</p> <ol style="list-style-type: none"> 1. Least information available for treatment 2. Least participation 3. Most negative drug interactions 4. Most opportunity for drug shopping 5. Most duplicate laboratory testing 6. Least conducive to information being available during relocation and disaster <p>+ Fewest safeguards required to protect client information due to least volume of information</p> <p>– Mental health providers (psychiatrist and psychologists) prefer options that meet client approval</p> <p>– Most complex safeguards required to protect client information due to most complexity</p>	<p>• Some quality of care</p> <ol style="list-style-type: none"> 1. Some information available for treatment 2. Some participation 3. More negative drug interactions 4. More opportunity for drug shopping 5. Some duplicate laboratory testing 6. Somewhat conducive to information being available during relocation and disaster <p>• Some safeguards required to protect client information due to volume of information</p> <p>– Mental health providers (psychiatrist and psychologists) prefer options that meet client approval</p> <p>– Most complex safeguards required to protect client information due to most complexity</p>	<p>– Less quality of care</p> <ol style="list-style-type: none"> 1. Some information available for treatment 2. Less participation 3. Some negative drug interactions 4. More opportunity for drug shopping 5. More duplicate laboratory testing 6. Less conducive to information being available during relocation and disaster <p>+ Less safeguards required to protect client information due to less volume of information</p> <p>– Mental health providers (psychiatrist and psychologists) prefer options that meet client approval</p> <p>+ Less complex safeguards required to protect client information due to less complexity</p>

(continued)

Table D-3. Quality of Care (continued)

Specific Issues	No Consent	Opt Out (Client Auto IN)	Opt In w/Restrictions (Client Auto OUT Plus Choice)	Opt Out w/Exceptions (Client Auto IN Plus Choice)	Opt In (Client Auto OUT)
Provider wants to deliver effective treatment in the most efficient way. (continued)	<ul style="list-style-type: none"> - Least likely to enhance client/physician relationship due to client choice as sensitive information is automatically in the system - Most potential liability from HIE errors due to no client choice 	<ul style="list-style-type: none"> - Less likely to enhance client/physician relationship due to client choice as sensitive information is automatically in the system • Some potential liability from HIE errors due to complexity of client choices 	<ul style="list-style-type: none"> + More likely to enhance client/physician relationship due to client choice as sensitive information can be excluded from the system - More potential liability from HIE errors due to complexity of client choices 	<ul style="list-style-type: none"> + More likely to enhance client/physician relationship due to client choice as sensitive information can be excluded from the system - More potential liability from HIE errors due to complexity of client choices 	<ul style="list-style-type: none"> • Somewhat likely to enhance client/physician relationship due to client choice as all information may be excluded from the system • Some potential liability from HIE errors due to complexity of client choices
Client wants effective treatment balanced with protection of their information.	<ul style="list-style-type: none"> - Least quality of care 1. Quality of care could be compromised if mental health information is in the system 2. Access to mental health information can work against client 3. Diagnostic discrimination based on psychiatric history - Least client choice—none - Least protective of clients' sensitive information 	<ul style="list-style-type: none"> - Less quality of care 1. Quality of care could be compromised if mental health information is in the system 2. Access to mental health information can work against client 3. Diagnostic discrimination based on psychiatric history - Less client choice - Less protection of clients' sensitive information but client has to opt out, which requires client action 	<ul style="list-style-type: none"> + Most quality of care 1. Quality of care could be compromised if mental health information is in the system 2. Access to mental health information can work against client 3. Diagnostic discrimination based on psychiatric history + Most client choice + Most protection of clients' sensitive information but client has to opt out, which requires client action + Clients may seek treatment if given a choice 	<ul style="list-style-type: none"> + More quality of care 1. Quality of care could be compromised if mental health information is in the system 2. Access to mental health information can work against client 3. Diagnostic discrimination based on psychiatric history + More client choice + More protection of clients' sensitive information but client has to opt out, which requires client action + Clients may seek treatment if given a choice 	<ul style="list-style-type: none"> • Some quality of care 1. Client choice 2. Quality of care becomes duty of provider/client to dialogue—as well as client to provide factual health information 3. Diagnostic discrimination based on psychiatric history • Some client choice • Some protection of clients' sensitive information but client has to opt out, which requires client action. - Either/Or—not really choice

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Table D-3. Quality of Care (continued)

Specific Issues	No Consent	Opt Out (Client Auto IN)	Opt In w/Restrictions (Client Auto OUT Plus Choice)	Opt Out w/Exceptions (Client Auto IN Plus Choice)	Opt In (Client Auto OUT)
Client wants effective treatment balanced with protection of their information. (continued)	NA	NA	+ Facilitate participation for those who do not want mental health information in exchange but would otherwise choose to opt out	+ Facilitate participation for those who do not want mental health information in exchange but would otherwise choose to opt out	NA

Note: 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 D-4. Level of Trust in HIE

Specific Issues	No Consent	Opt Out (Client Auto IN)	Opt In w/Restrictions (Client Auto OUT Plus Choice)	Opt Out w/Exceptions (Client Auto IN Plus Choice)	Opt In (Client Auto OUT)
Client wants to be informed and know that the provider and HIE will provide accurate information for treatment and will safeguard information.	<p>– Least client trust/choice</p> <ol style="list-style-type: none"> 1. Need for education from client decision-making perspective 2. Least confusing to the client 3. Least client choice likely to erode trust 	<p>– Less client trust/choice</p> <ol style="list-style-type: none"> 1. Need for education due to choices and consequences of choices 2. May be confusing to client 3. Some client choice which is most likely to enhance trust 4. More available information may enhance provider trust in quality of information 5. Requires action to “protect” information 	<p>+ Most client trust/choice</p> <ol style="list-style-type: none"> 1. Most need for education due to complex choices and consequences of choices—may be confusing to client 2. Most client choice which is most likely to enhance trust 3. Least available information may erode provider trust in quality of information 	<p>+ More client trust/choice</p> <ol style="list-style-type: none"> 1. Most need for education due to complex choices and consequences of choices—may be confusing to client 2. Most client choice which is most likely to enhance trust 3. Least available information may erode provider trust in quality of information 	<p>• Some client trust/choice</p> <ol style="list-style-type: none"> 1. Need for education due to choices and consequences of choices—may be confusing to client 2. More client choice which is most likely to enhance trust 3. Less available information may erode provider trust in quality of information

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Table D-4. Level of Trust in HIE (continued)

Specific Issues	No Consent	Opt Out (Client Auto IN)	Opt In w/Restrictions (Client Auto OUT Plus Choice)	Opt Out w/Exceptions (Client Auto IN Plus Choice)	Opt In (Client Auto OUT)
Provider wants other providers in HIE to safeguard information and provide accurate and complete information.	+ Least potential errors due to most volume of information	+ Less potential errors due to more volume of information	- Most potential errors due to less volume of information	• Some potential errors due to volume of information	- More potential errors due to less volume of information
	+ Most information available to improve treatment decisions	+ More information available to improve treatment decisions	- Least information available to improve treatment decisions	- Less information available to improve treatment decisions	• Some information available to improve treatment decisions
	- Most need to protect client information due to most volume	- More need to protect client information due to more volume	+ Least need to protect client information due to least volume	• Some need to protect client information due to less volume	• Some need to protect client information due to volume
	+ Least complex security necessary to protect client information due to least complexity	+ Less complex security needed to protect client information due to less complexity	- Most complex security needed to protect client information due to most complexity	- Most complex security needed to protect client information due to most complexity	+ Less complex security needed to protect client information due to less complexity
	+ Most available information may enhance provider trust in quality of information	+ More available information may enhance provider trust in quality of information	- Least available information may diminish provider trust in quality of information	- Less available information may diminish provider trust in quality of information	• Some available information may diminish provider trust in quality of information
	+ No need for education on client choices	+ Less need for education due to less complexity on client choices	- Most need for education due to most complexity of client choices	- Most need for education due to most complexity of client choices	+ Less need for education due to less complexity on client choices
	+ Least potential drug errors due to volume of client information	+ Less potential drug errors due to more volume of client information	- Most potential drug errors due to least volume of client information	- More potential drug errors due to less volume of client information	• Some potential drug errors due to volume of client information
	- Most provider liability due to volume of information available for decision making	- More provider liability due to more volume of information available for decision making	+ Least provider liability due to least volume of information available for decision making	+ Less provider liability due to less volume of information available for decision making	• Some provider liability due to volume of information available for decision making
	+ Least education needed for staff due to least complexity	+ Less education needed for staff due to less complexity	- Most education needed for staff due to most complexity	- Most education needed for staff due to most complexity	+ Less education needed for staff due to less complexity

Note: Influenced by client choice (whether information is exchanged and if so, what information is exchanged and to whom), efforts to inform and educate, safeguard client information, and ability to provide extra protections of sensitive information (errors amplified as carried forward through HIE, increased professional responsibility).

Table D-5a. Savings and Cost Avoidance

Specific Issues	No Consent	Opt Out (Client Auto IN)	Opt In w/Restrictions (Client Auto OUT Plus Choice)	Opt Out w/Exceptions (Client Auto IN Plus Choice)	Opt In (Client Auto OUT)
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, savings in long term, better quality of care, quicker reimbursements, accessing payer information for claims and eligibility.	<ul style="list-style-type: none"> + Most savings from business processes impacts due to volume of data and least complexity + Most savings from access to complete information to increase accuracy and improved quality of care - Most cost to educate due to most volume of participants + Least cost to educate due to least complexity. + Most savings due to less harmful drug interactions, drug shopping, duplicate lab tests, and client harm + Most information available to obtain reimbursements 	<ul style="list-style-type: none"> + More savings from business processes impact due to volume and complexity + More savings from access to complete information, payments, increased accuracy, and quality of care - More cost to educate due to more volume of participants + Less cost to educate due to less complexity + More savings due to less harmful drug interactions, drug shopping, duplicate lab tests, and client harm + More information available to obtain reimbursements 	<ul style="list-style-type: none"> - Least savings from business processes impact due to workload impact and complexity - Least savings from access to complete information to increase accuracy and improved quality of care + Less costly to educate due to less volume of participants - Most cost to educate due to most complexity - Least savings due to more potential harmful drug interactions, drug shopping, duplicate lab tests, and client harm - Least information available to obtain reimbursements 	<ul style="list-style-type: none"> - Least savings from business processes impact due to volume and complexity - Least savings from access to complete information, payments, increased accuracy, and quality of care + Least cost to educate due to least volume of participants - Most cost to educate due to most complexity - Least savings due to less harmful drug interactions, drug shopping, duplicate lab tests, and client harm - Least information available to obtain reimbursements 	<ul style="list-style-type: none"> - Less savings from business processes impact due to volume and complexity - Less savings from access to complete information, payments, increased accuracy, and quality of care • Some cost to educate due to volume of participants + Less cost to educate due to less complexity - Less savings due to less harmful drug interactions, drug shopping, duplicate lab tests, and client harm - Less information available to obtain reimbursements

Table D-5b. Investment

Specific Issues	No Consent	Opt Out (Client Auto IN)	Opt In w/Restrictions (Client Auto OUT Plus Choice)	Opt Out w/Exceptions (Client Auto IN Plus Choice)	Opt In (Client Auto OUT)
Provider business process improvement expenses and time for technical upgrades, tech support, maintenance, oversight, complexity of implementation, education and notices, inputting and managing client choice (ongoing).	+ Least cost for process improvement + Most sustainable + Least potential maintenance activities as no client choices to be implemented - Most cost to address sensitive information—requires secondary process	+ Less cost for process improvement + More sustainable + Less potential maintenance activities to implement client choices and changes - Most cost to address sensitive information—requires secondary process.	- Most cost for process improvement - Least sustainable - Most potential maintenance activities to implement client choices and changes + Least cost to address sensitive information as no secondary process needed since option has the capability to exclude	- Most Cost for process improvement - Less sustainable - Most potential maintenance activities to implement client choices and changes + Least cost to address sensitive information as no secondary process needed since option has the capability to exclude	<ul style="list-style-type: none"> • Some cost for process improvement • Some sustainable • Some potential maintenance activities to implement client choices and changes - Most cost to address sensitive information—requires secondary process
<ul style="list-style-type: none"> • Cost of enforcement effort (design and implementation) • Secondary process for those clients not participating in exchange or for sensitive information • Sustainability and success of HIE system affected by the percentage of participating clients and providers 					

Table D-6. Technology

Specific Issues	No Consent	Opt Out (Client Auto IN)	Opt In w/Restrictions (Client Auto OUT Plus Choice)	Opt Out w/Exceptions (Client Auto IN Plus Choice)	Opt In (Client Auto OUT)
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.	<ul style="list-style-type: none"> + Least complex + Least challenge to small practice providers + Least likely to require system changes 	<ul style="list-style-type: none"> + Less complex + Less challenge to small practice providers + Less likely to require system changes 	<ul style="list-style-type: none"> - Most complex - Most challenge to small practice providers - Most likely to require system changes - Most challenge to implement, restricted information withheld - Most challenges if need to go back and retroactively delete data 	<ul style="list-style-type: none"> - Most complex - Most challenge to small practice providers - Most likely to require system changes - Most challenge to implement, restricted information withheld - Most challenges if need to go back and retroactively delete data 	<ul style="list-style-type: none"> - More complex - More challenge to small practice providers - More likely to require system changes

Table D-7. National Efforts

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

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

Table D-8. Political Viability

Specific Issue	No Consent	Opt Out (Client Auto IN)	Opt In w/Restrictions (Client Auto OUT Plus Choice)	Opt Out w/Exceptions (Client Auto IN Plus Choice)	Opt In (Client Auto OUT)
Political Viability	- Most likely to be negatively received by consumer advocates	- More likely to be negatively received by consumer advocates	+ Least likely to be negatively received by consumer advocates	+ Least likely to be negatively received by consumer advocates	+ Less likely to be negatively received by consumer advocates

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

Table D-9. Liability and Laws (based on limited review of CA laws only)

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

Note: No identifiable legal risk; mental health information may be shared between providers for treatment purposes.