

2009 HISPC Seminar Series

Health Information Security and Privacy Collaboration (HISPC) Multi-State Collaboration

Intrastate and Interstate Consent Policy Options Collaborative

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Health Information Security & Privacy

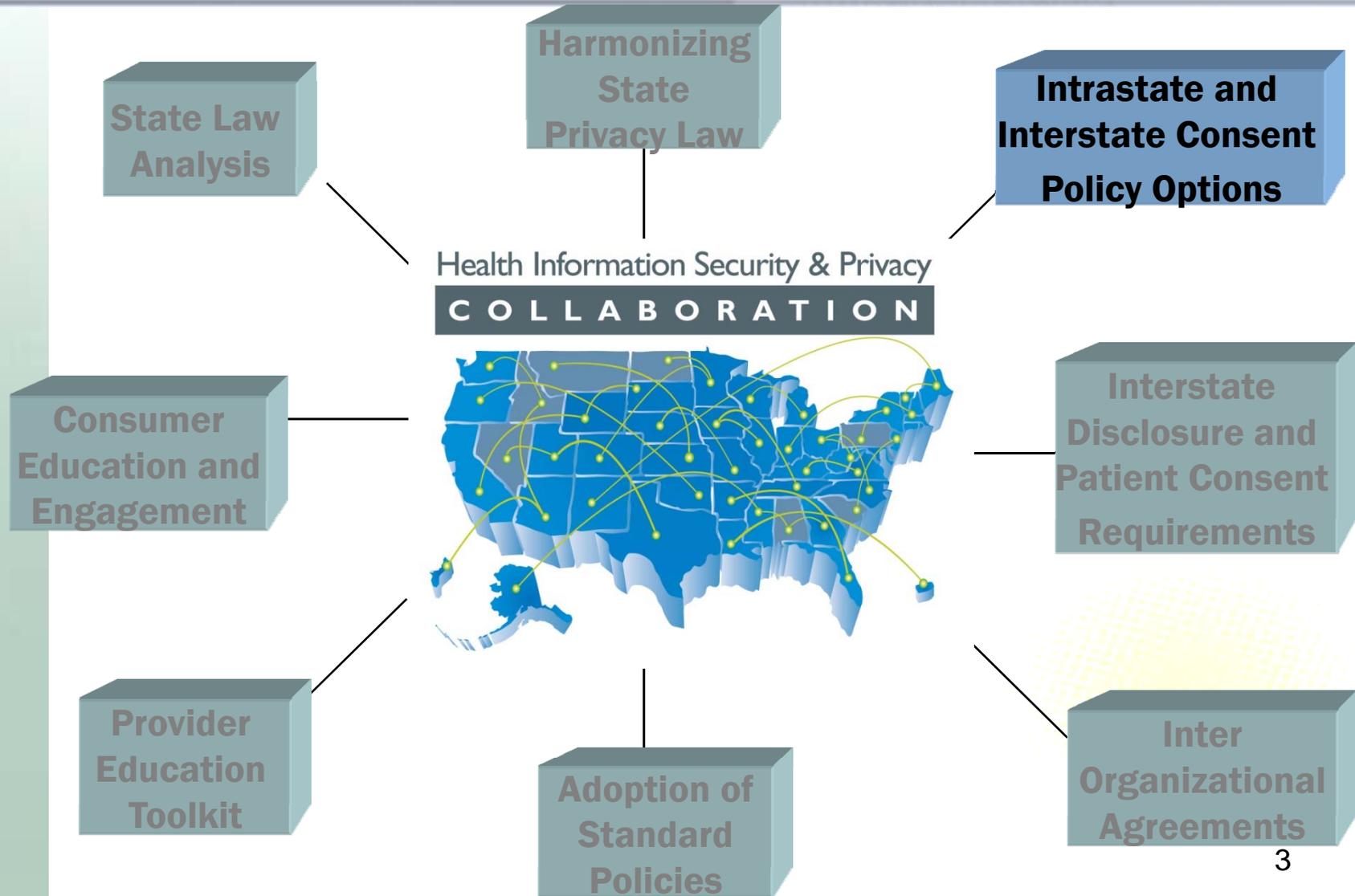
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HISPC Phase III



Intrastate Consent Policy Options Analysis

Health Information Security & Privacy

COLLABORATION



Presenters:



Linda Attarian, MPH, Esq.



Patricia A. Markus, Esq.

Introduction

- Central question of intrastate analysis
- Learning objectives
- Components of intrastate analysis
- Templates and how to use them
- Different approaches to the analysis
- Findings and lessons learned

Intrastate Consent Policy Options Analysis: What Is the Question?

- Intrastate consent policy central question: how much choice do consumers have, and how much choice should they have, over the access, acquisition, use, or disclosure of their personally identifiable health information contained in an interoperable electronic health record?
- The collaborative referred to this concept as “consumer consent.”

Learning Objectives

- Learn how to develop and use templates to assist your state in evaluating the complex issues surrounding consumer consent policy options.
- Learn how to leverage the templates developed and used by the North Carolina and California collaborative teams as a framework within which to conduct your state's analysis of consumer consent policy options.

HISPC III Intrastate Consent Policy Analysis

Components of the Analysis

- Which consumer consent option (or options) is most likely to further interoperable electronic HIE?
- Components of the analysis
 - Literature review
 - Templates to compare the options
 - Identify consent policy alternatives/options
 - Evaluate consent options in health care scenarios
 - Evaluate effect of consent alternatives on stakeholders

Participating (core) and reviewing states

- California and North Carolina
- AZ, KY, NJ, OK, WV

Questions to Consider Before Developing or Using Templates

- **Before selecting or developing consent policy analysis templates:**
 - **Determine the scope of your analysis:**
 - Stakeholder interests?
 - Time constraints?
 - Available resources?
 - Limited to treatment?
 - Limited to sensitive health information?
 - Limited to one or two consent policy options?

Questions to Consider Before Developing or Using Templates (cont'd)

- **Before selecting or developing consent policy analysis templates:**
 - **Selection of consent policy options:**
 - How granular?
 - Include PHRs?
 - Include electronic consent directives?
 - **Will you build off the results/findings of California and North Carolina?**
 - **Will you create a new, independent analysis?**

Overview

Consent Policy Options Analysis Templates

- Three categories of templates:
 - Research
 - Analysis
 - Summary analysis and recommendations



Overview

Consent Policy Options Analysis Templates (cont'd)

- Research templates:
 - Issue Recommendation
 - Summary of Pertinent Facts
 - Executive Summary of Pertinent Facts



Summary of Pertinent Facts

		<p>INTRASTATE AND INTERSTATE CONSENT POLICY OPTIONS COLLABORATIVE SUMMARY OF PERTINENT FACTS Related to ONE SOURCE <i>(Limit to one page for each source, if possible)</i></p>	
Committee:			
Issue:			
Document Title:			
Web Link:			
Key Word(s) Searched			
Document Source: (Organization/ Publisher, etc.)	Author		
	Document Date		
Bullets of Pertinent Facts Relating to Issue:			Page Number

Executive Summary of Pertinent Facts

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INTRASTATE AND INTERSTATE CONSENT POLICY OPTIONS COLLABORATIVE EXECUTIVE SUMMARY OF PERTINENT FACTS

(Limit to four pages for each issue, if possible)

Committee:	Privacy	
Issue:	Stick Standard	
Bullets of Pertinent Facts Relating to Issue:	Source/Link:	

Overview

Consent Policy Options Analysis Templates

- Analysis templates:
 - Criteria for Developing Issue Alternatives
 - List of Issue Alternatives
 - Analysis of Issue Alternatives
 - Scenario
 - Applicable Laws
 - Consent Option Analysis (North Carolina)

Consent Option Analysis (North Carolina)

	<p>INTRASTATE AND INTERSTATE CONSENT POLICY OPTIONS COLLABORATIVE Task Group Form 1 CONSENT OPTION ANALYSIS</p>		
COMMITTEE:	HIE POLICY DEVELOPMENT COMMITTEE	DATE:	
SCENARIO TWO :	<p>OUTPATIENT CARE COORDINATION: For this case, the patient is 90 years old with a history of dementia and would be providing permission to allow her health information to be shared, through a health information exchange network, between an inpatient hospital and (1) the patient's primary care physician, (2) the hospital's outpatient care coordinator, and (3) a home health care provider. The health information shared includes records pertaining to the patient's mental health history. The analysis will examine how the consent options will affect quality of care, the business processes of the clinicians, public trust in the HIE network, the patient's right to privacy and legal liabilities of all parties involved.</p>		
ASSUMPTIONS:	<p>The scenario involves several "send and receive" HIE pathways between "requesting" clinicians and "consulting" clinicians. The scenarios include the electronic exchange of information needed to verify eligibility and authorization for services. The purpose of the health information exchange is for treatment. The scenarios do not involve information held in a PHR.</p>		
INSTRUCTIONS:	<p>List the most significant pros and cons with respect to the impact each of the five (5) consent options is likely to have on each of the issues listed in the far left column. If addressing each instance of information exchange within each scenario becomes too repetitive, please focus on the exchanges of information that require "special" scrutiny under the law (i.e., minors' information, mental health treatment records, sensitive communicable disease reporting, etc.).</p>		
BACKGROUND:	<p>Currently consent is not required under HIPAA for sharing information for purposes of treatment. However, other laws may require some level of consent in order to exchange health information relating to HIV infection, mental health, genetics, drug and alcohol abuse, minors, and sexually transmitted diseases.</p>		

Consent Option Analysis (North Carolina) (cont'd)

NO CHOICE: Patient's records are automatically placed into the HIE system, regardless of patient preferences. This alternative assumes that all records of patients of participating entities will be available to the system. It also assumes that information in the system is available for purposes of treatment.

ISSUE	PROS	CONS
<p>QUALITY OF CARE:</p> <ul style="list-style-type: none"> • Patient wants effective treatment balanced with protection against unauthorized access to their health information; • Provider wants to deliver effective treatment in the most timely and efficient way; 	<ul style="list-style-type: none"> • Maximum access to needed information should improve quality of care and decrease risk of harm due to errors; • Others: 	<ul style="list-style-type: none"> • No choice over who may use and exchange records may deter consumers from accessing health care providers; • Others:
<p>BUSINESS PRACTICE IMPACT:</p> <ul style="list-style-type: none"> • Providers want HIE system that minimizes changes in work flow; minimizes investments in technology; decreases paperwork and administrative burdens; 	<p>Inpatient hospital:</p> <ul style="list-style-type: none"> • Maximizes ease and efficiency of sharing health information that supports continuity of care; • Others: <p>Physician:</p> <ul style="list-style-type: none"> • Maximizes ease and efficiency of responding to requests to share patient health information with outpatient care coordinator; • Others: <p>Outpatient care coordinator:</p> <ul style="list-style-type: none"> • Maximizes ease of making referral to home health care provider; • Others: <p>Home health care provider:</p> <ul style="list-style-type: none"> • Maximizes ease of obtaining needed health information to ensure appropriate level of care; • Others: 	<p>Inpatient hospital:</p> <ul style="list-style-type: none"> • Maximizes burden to assure patients that their health information is protected from unauthorized use; • Others: <p>Physician:</p> <ul style="list-style-type: none"> • May be in violation of NC privacy laws regarding release of mental health records; • Others: <p>Outpatient care coordinator:</p> <ul style="list-style-type: none"> • Same as physician and inpatient hospital; • Others: <p>Home health care provider:</p> <ul style="list-style-type: none"> • Same as inpatient hospital; • Others:

Consent Option Analysis (North Carolina) (cont'd)

OPT OUT WITH EXCEPTIONS: Patient's health information is automatically placed into the HIE system and exchange is allowed for sharing of health information without the patient's prior permission. The patient's information remains available for electronic exchange until the patient chooses to opt-out of participation in the HIE and revokes permissions. Patients may specify (i) to whom health information may not be disclosed; (ii) for what purposes health information may not be disclosed, and/or (iii) what specific health information may not be disclosed.

ISSUE	PROS	CONS
QUALITY OF CARE:		
BUSINESS PRACTICE IMPACT:		
PUBLIC CONFIDENCE/TRUST IN HIE:		
HEALTH CARE COST AVOIDANCE:		
RISKS/THREATS TO RIGHT TO PATIENT PRIVACY:		

Overview

Consent Policy Options Analysis Templates

- Summary and recommendations templates:
 - Summary (California)
 - Summary of Findings (North Carolina)
 - Summary of Pros and Cons (North Carolina)

Summary (California)



Intrastate and Interstate Consent Policy Options Collaborative E-Prescribing Summary

COMMITTEE:	PRIVACY COMMITTEE – Patient Consent for e-Prescribing	Date: October 2008
ISSUE:	Patient consent to exchange health medication information through a Health Information Exchange 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 healthcare 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	<ul style="list-style-type: none"> ◆ 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. 	<ul style="list-style-type: none"> ◆ For purpose of this analysis: <ul style="list-style-type: none"> + <i>No Consent</i>—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 patients choosing not to seek care or less accurate information being available due to patients providing incorrect information. + <i>Opt In with Restrictions</i>—this choice will result in the least information being available to the physician. + <i>Opt Out</i>—this choice will result in more information being available as all patient information will be in the system except for those patients choosing to opt out. + <i>Opt In</i>—this choice will result in less information being available since patients will need to take an action to be included in the system. + <i>Opt Out with Exceptions</i>—this choice will result in some information being available as patient information will be in the system except for those patients choosing to opt out and the information patients choose exceptions.

Legend: “+” is equivalent to a pro statement; “-” is equivalent to a con statement; and a “•” (bullet) is equivalent to a neutral statement.

	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)
SUMMARY	+ Most quality of care + Least costly/most sustainable	+ More quality of care + Less costly/more sustainable	- Least quality of care - Most costly/least sustainable	• Some quality of care - More costly/less sustainable	- Less quality of care - Somewhat costly/less sustainable
	• Some legal risk - Inconsistent with CalPSAB principles - Least patient choice + Most likely to reduce adverse drug reactions + Most likely to detect drug	+ Less legal risk + Consistent with CalPSAB principles • Some patient choice + More likely to reduce adverse drug reactions + More likely to detect drug	+ Less legal risk + Consistent with CalPSAB principles + Most patient choice - Least likely to reduce adverse drug reactions - Least likely to detect drug	+ Less legal risk + Consistent with CalPSAB principles + More patient choice - Less likely to reduce adverse drug reactions - Less likely to detect drug	+ Less legal risk + Consistent with CalPSAB principles + More patient choice - Less likely to reduce adverse drug reactions - Less likely to detect drug

Summary of Findings (North Carolina)

	<h2>INTRASTATE AND INTERSTATE CONSENT POLICY OPTIONS COLLABORATIVE SUMMARY OF FINDINGS</h2>	
COMMITTEE:	North Carolina Consent Policy Task Force	DATE: November 17, 2008
FACTORS:	<p>The North Carolina Consent Policy Task Force analyzed the potential impact of each of five consumer consent options on four interrelated factors that will impact decisions of health care providers and consumers to exchange health information within and across health care organizations through electronic HIE. The four factors include:</p> <ul style="list-style-type: none"> • cost and quality of health care • business processes of health care providers • consumer and provider confidence in HIE • legal liability 	
ASSUMPTIONS:	<ul style="list-style-type: none"> • The five ambulatory care scenarios involve the exchange of 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 scenarios involve health care providers who are recognized as separate health care organizations. • All of the requesting and responding providers in the scenarios exchange health information with each other but are not necessarily affiliated participants in an HIO. • If given a choice, the consumer is consenting to having some or all of his or 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. 	

Summary of Findings (North Carolina) (cont'd)

QUALITY OF CARE	No Choice	Opt Out	Opt In	Opt Out with Exceptions	Opt In w/Restrictions
<p>HIE can improve quality of care by ensuring appropriate care coordination, less duplication, and less chance for errors/adverse events.</p> <p>Providers are more likely to access records through HIE if they have confidence that the records are complete and contain reliable information.</p> <p>Consumers are more likely to seek treatment and share information with their providers if they know that their health records are secure and that their privacy is protected.</p>	<p>Under this consent option, the consumer has no choice regarding whether their health information is disclosed through HIE. If the provider chooses, all of the consumer's health information is available for disclosure across multiple health organizations through HIE.</p> <p>In the ambulatory care scenarios, the referring and consulting clinicians have unlimited access through HIE to the consumer's health information. Each clinician is likely to be aware of the consumer's relevant medical history, specific treatment protocols, tests ordered, lab results, and any adverse reactions to medication, etc., allergies, etc. This, in turn, likely results in improved care, more effective care coordination, fewer duplicative tests, and fewer</p>	<p>Under this consent option, the consumer's health information is available for exchange through HIE unless the consumer chooses to exclude it.</p> <p>If the consumer does not opt out, then all of their health information is available for exchange through HIE.</p>	<p>Under this consent option, the consumer's health information is available for disclosure through HIE only if the consumer specifically permits it.</p> <p>If the consumer does not opt in, then none of his/ her health information is available for exchange through HIE.</p> <p>To the extent that the consumer's health information is inaccessible through HIE, the risk for unnecessary costs for duplicative tests, errors and adverse drug reactions increase.</p> <p>Opt In option likely to have somewhat less participation because consumers will need to understand the benefits of HIE and the consequences of their choice if this option is to be implemented effectively.</p>	<p>Under this consent option, the consumer's health information is available for disclosure through HIE unless the consumer chooses to prohibit it. For example, the consumer may allow only disclosures of health information that pertain to a specific stay in a particular hospital.</p> <p>Any disclosures regarding the consumer's other episodes of care must be made by fax or verbally by the consumer at each encounter.</p>	<p>Under this consent option, the consumer's health information is available for disclosure through HIE only if the consumer specifically permits it. In addition, the consumer may prohibit disclosure of information about certain conditions, or information generated by certain providers, or information generated on certain dates. For example, a consumer may restrict access to information related to diabetes for fear that he/she may be discriminated against by his/her insurer. Any disclosures regarding the consumer's diabetes must be made by fax or verbally by the consumer at each encounter.</p>

Summary of Pros and Cons (North Carolina)

		INTRASTATE AND INTERSTATE CONSENT POLICY OPTIONS COLLABORATIVE SUMMARY OF PROS AND CONS			
QUALITY OF CARE	No Choice	Opt Out	Opt In	Opt Out with Exceptions	Opt In w/Restrictions
<p>GOAL: High quality of health care resulting from timely access to a high volume of complete and accurate EHRs, and high level of consumers involvement in the management of their own health care</p> <p>FACTORS:</p> <ul style="list-style-type: none"> Amount of reliable information available to providers through HIE Consumer participation in HIE 	<p>SUMMARY OF PROS:</p> <ul style="list-style-type: none"> Highest volume of health information available to providers because consumers have no option to exclude their information, including sensitive information <p>SUMMARY OF CONS:</p> <ul style="list-style-type: none"> Consumers with concerns about privacy of their sensitive health information are more likely to avoid seeking health care (resulting in lower quality of care), or to withhold or omit sensitive information from their records (compromising the 	<p>SUMMARY OF PROS:</p> <ul style="list-style-type: none"> Moderate volume of health information available to providers, because only consumers with concerns about the privacy of their sensitive health information are likely to opt out The health information available through HIE may be more reliable than in the no choice scenario, because consumers who choose not to opt out (i.e., consent to share their data) are likely to provide complete health histories (assuming that consumers' choices were informed and 	<p>SUMMARY OF PROS:</p> <ul style="list-style-type: none"> The health information available through HIE may be more reliable than in no choice or opt out scenarios, because consumers who choose to opt in (i.e., consent to share their data) are likely to provide complete health histories (assuming that the consumers' choices were informed and meaningful) Because the opt in process involves obtaining advanced consent from consumers, there is less potential for error regarding patient identification. 	<p>SUMMARY OF PROS:</p> <ul style="list-style-type: none"> High volume of health information likely available to providers, because consumers with concerns about the privacy of their sensitive health information are able to exclude only the sensitive information and have the non-sensitive information included in the exchange Provides consumers a choice (more granular than opt out all or none) to protect their sensitive information, enhancing consumer confidence and encouraging participation in the management of their 	<p>SUMMARY OF PROS:</p> <ul style="list-style-type: none"> Moderate volume of health information available to providers, because consumers with concerns about the privacy of their sensitive information may exclude only the sensitive information and include the non-sensitive information in the exchange The health information available through HIE likely is more reliable than no choice or opt out, because consumers who choose to opt in (i.e., consent to share their data) are likely to provide complete health histories (assuming that consumers' choices were informed and meaningful) Provides consumers a choice (more granular than opt out all or none) to protect their sensitive information, enhancing consumer confidence and encouraging participation in the management of their

Summary of Pros and Cons (North Carolina)

CONFIDENCE IN HIE	No Choice	Opt Out	Opt In	Opt Out with Exceptions	Opt In w/Restrictions
<p>GOAL: A consent policy that:</p> <ul style="list-style-type: none"> instills consumer confidence and trust in HIE instills provider confidence and willingness to participate in HIE 	<p>SUMMARY OF PROS:</p> <ul style="list-style-type: none"> High level of provider confidence due to likely high volume of health information available through HIE <p>SUMMARY OF CONS:</p> <ul style="list-style-type: none"> Low level of consumer confidence and trust in HIE, because consumers have no ability to protect (withhold) sensitive health information from the exchange Provider confidence in HIE is compromised to the extent that consumers avoid seeking health care or withhold information from the exchange in order to protect sensitive health information 	<p>SUMMARY OF PROS:</p> <ul style="list-style-type: none"> More consumer confidence in HIE than no choice option, because consumers are informed about HIE and are given the choice to exclude their health information Provider confidence in reliability of health information of consumers who choose not to opt out is high <p>SUMMARY OF CONS:</p> <ul style="list-style-type: none"> Provider confidence in the completeness and accuracy of the health information is somewhat compromised, because consumers who opt out in order to exclude sensitive information also must exclude all of their non-sensitive information from the exchange Consumer confidence in HIE is compromised, because consumers 	<p>SUMMARY OF PROS:</p> <ul style="list-style-type: none"> More consumer confidence in HIE than no choice or opt out options, because consumers are informed about HIE and given the choice to include their health information; consumer education efforts are likely to be greater than opt out option, since consumers have to affirmatively choose for their information to be included in the EHR Provider confidence in the reliability of health information of consumers who choose to opt in is high <p>SUMMARY OF CONS:</p> <ul style="list-style-type: none"> Provider confidence in the completeness and accuracy of the health information is somewhat compromised, because consumers who choose not to opt in in order to 	<p>SUMMARY OF PROS:</p> <ul style="list-style-type: none"> Offers even more consumer choice and control over information → Higher consumer confidence, because the consumer does not have to exclude non-sensitive health information in order to exclude sensitive information Provider confidence in the HIE is likely to be higher than for opt in or opt out options, because it is more likely that at least some consumer information will be included in the exchange <p>SUMMARY OF CONS:</p> <ul style="list-style-type: none"> Alternatively, because providers know that consumers can exclude some or all information from the exchange, there may be less information available than for all options but opt in with restrictions, which could 	<p>SUMMARY OF PROS:</p> <ul style="list-style-type: none"> Offers the most consumer choice and control over information Perhaps the highest consumer confidence in HIE Provider confidence in the HIE is likely to be higher than for opt in or opt out options, because it is more likely that at least some consumer information will be included in the exchange <p>SUMMARY OF CONS:</p> <ul style="list-style-type: none"> Alternatively, because providers know that consumers can exclude some or all information from the exchange, and because no information will be included unless consumers affirmatively choose to include it, it is possible that this option would result in the least volume of information available in the exchange, which could result in perhaps the lowest provider confidence in HIE

California's Approach

- California's use of the templates:
 - Summary Template
 - Comparative Analysis Template
 - Scenarios
 - Applicable Laws

North Carolina's Approach

North Carolina's use of the templates:

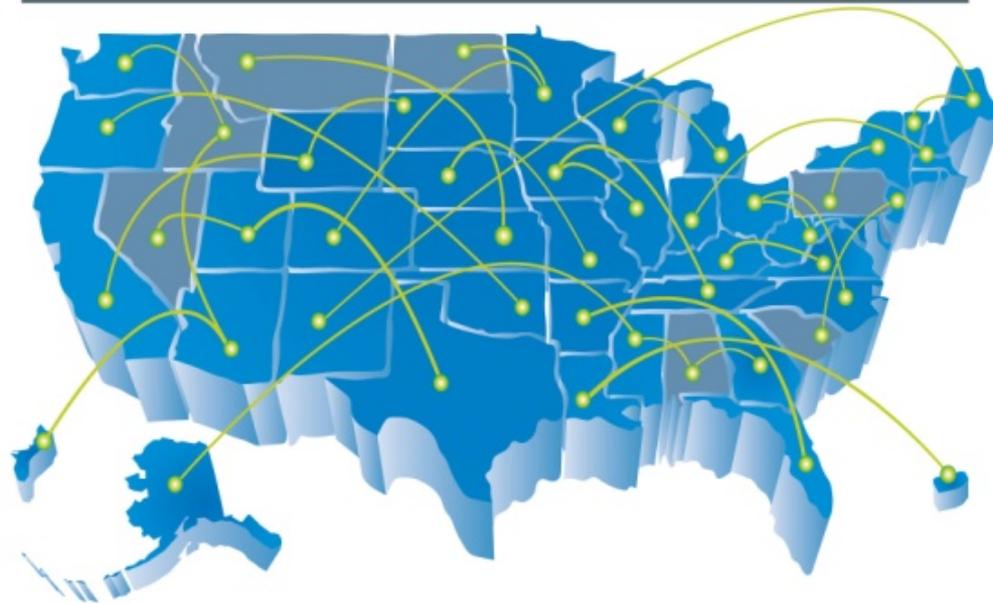
- Modified Comparative Summary Analysis
- Summary of Findings
- Summary of Pros and Cons

Intrastate Analysis

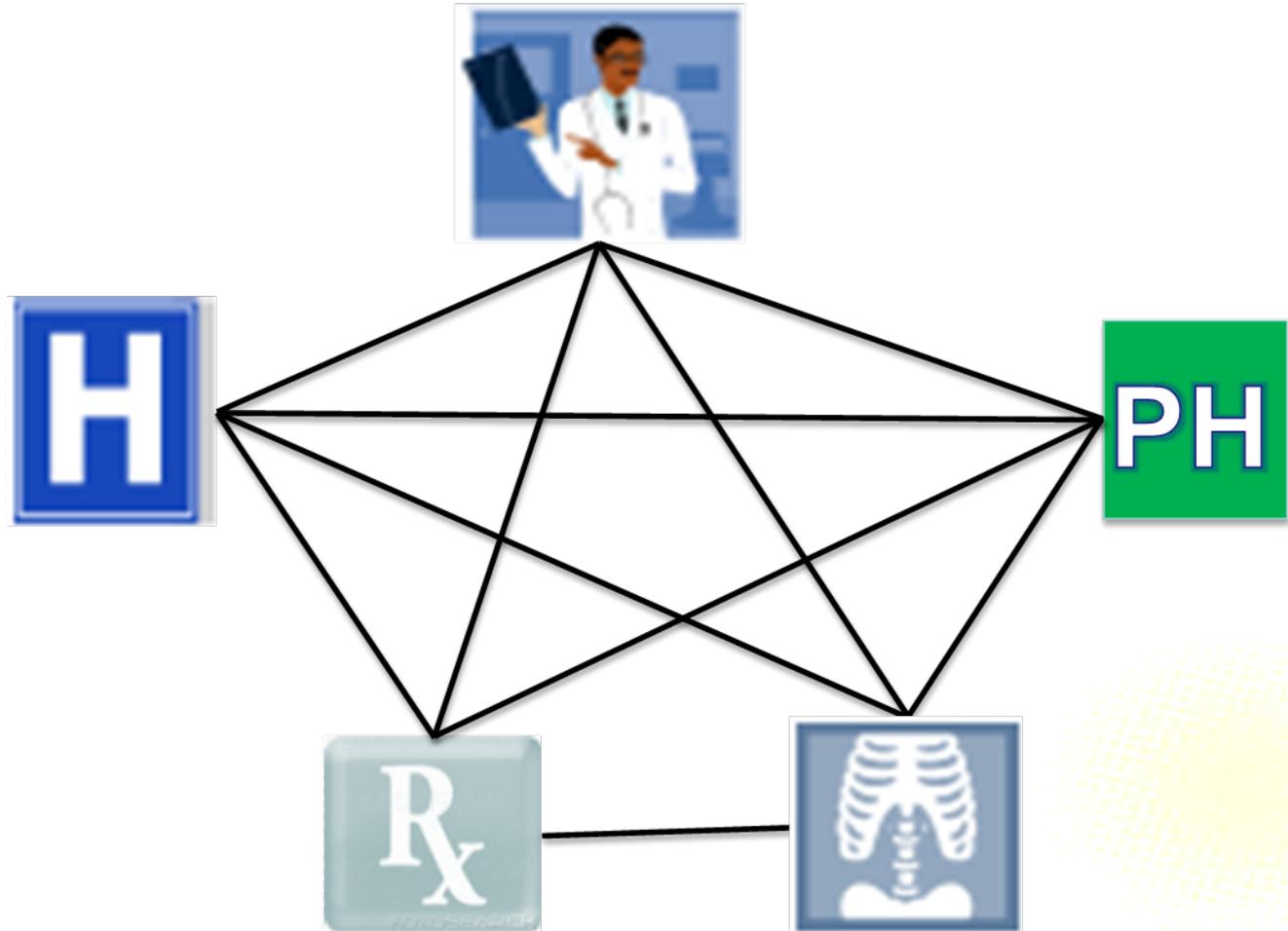
Findings and Lessons Learned

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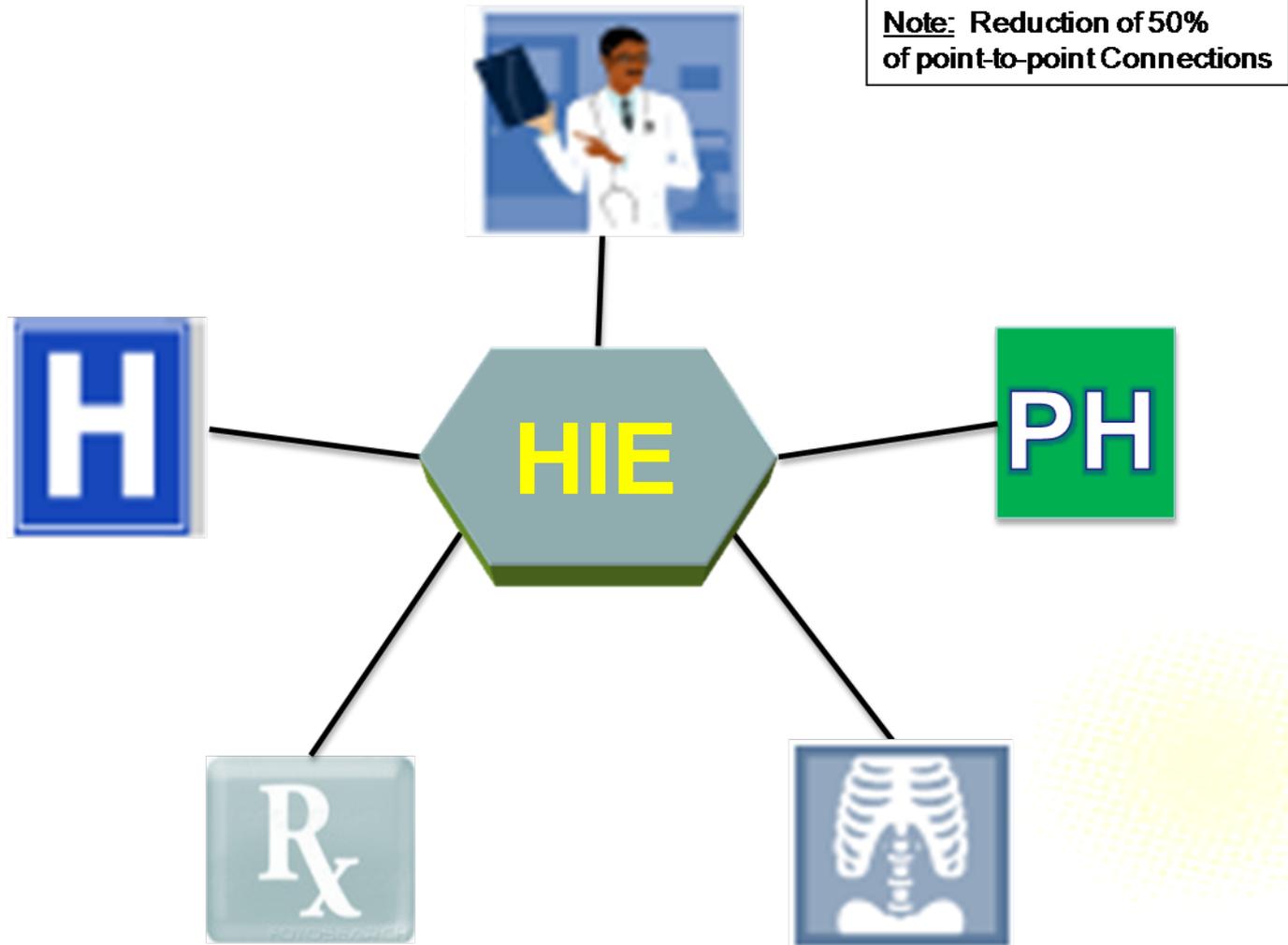
COLLABORATION



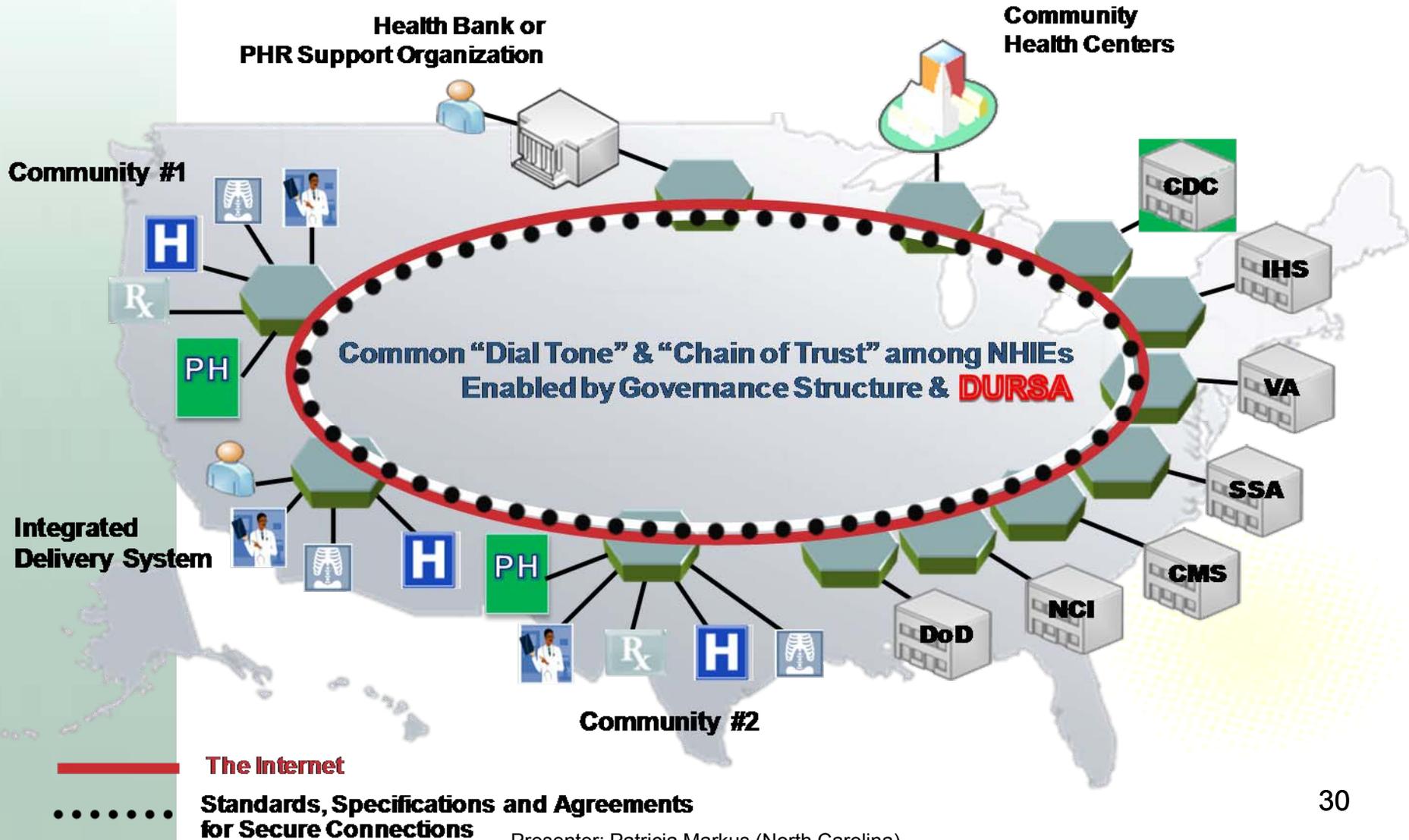
20th Century Health Care: Point-to-Point Exchanges



21st Century Health Care: HIE Utility



NHIN Network of Networks



Lessons Learned by Collaborative Teams

Joint conclusions by California and North Carolina teams:

- What consumers want from HIE
- What providers /payers want from HIE
- Quality of care and trust in HIE is not incompatible

Lessons Learned (cont'd)

Finding common ground:

- Education
- Commitment to privacy and security principles
- TRUST → requires a balancing of interests
- Consistency among organizations and states likely will need a single consent standard for an HIO, state, or region

Interstate Consent Analysis

Health Information Security & Privacy

COLLABORATION



Presenter:



William P. Mitchin

Learning Objectives

- Provide directions for states interested in researching state-driven legal mechanisms to resolve barriers to the interstate electronic exchange of health information.
- Assist states in determining how each mechanism may serve as a model for addressing a major barrier to the electronic exchange of protected health information (PHI).

Background: Uniform State Law

- A legislative proposal approved by the National Conference of Commissioners of Uniform State Law (NCCUSL).
- Proposed to state legislatures by NCCUSL for their adoption, usually in its entirety, to uniformly govern a matter of interest among adopting states.
- A uniform law would offer states the option to enact the same law governing consent, which would supersede any conflicting laws between adopting states.

Background: Model Act

- Legislative initiative proposed by the NCCUSL or an advocacy or trade group for adoption by state legislatures on a matter of interest to all states.
- The difference between a model act and a uniform law is that a model act may or may not be adopted in its entirety.
- States frequently modify a model act to meet their own needs, or they may adopt only a portion of the model act.

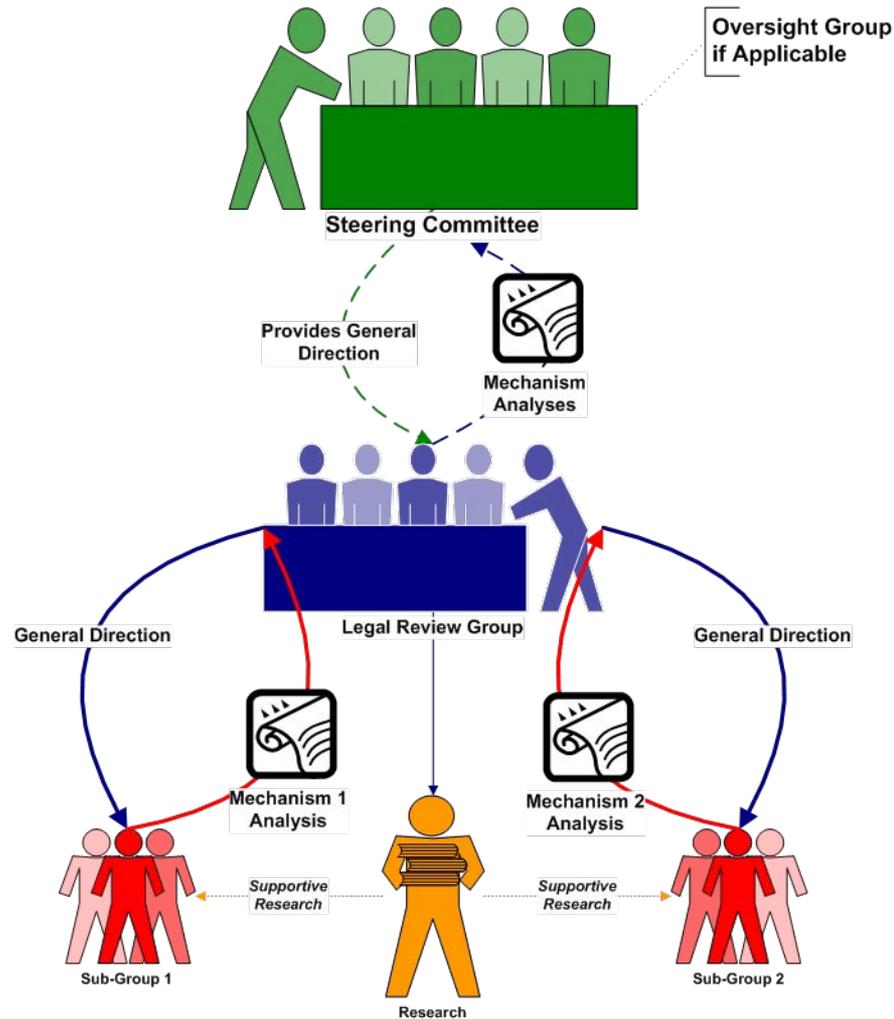
Background: Choice of Law

- A provision that states could adopt to specify which state's law governs consent when PHI is requested to be exchanged between states with conflicting laws.

Background: Interstate Compact

- A voluntary agreement between two or more states that is designed to meet common problems of the parties concerned.
- Compacts that usurp federal power receive consent of the U.S. Congress as specified in Article I, Section 10 of the Constitution.
- An interstate compact addressing consent to the interstate exchange of PHI would supersede conflicting laws between states that join the compact.

Interstate Analysis Approach



Interstate Template Development

- Provide a foundation for completing a comprehensive and consistent method of evaluation.
- Developed a series of review criteria that require an analysis of state law combined with identification of the pros and cons for pursuing a specific legal mechanism.

Interstate Template Development (cont'd)

Analysis Categories

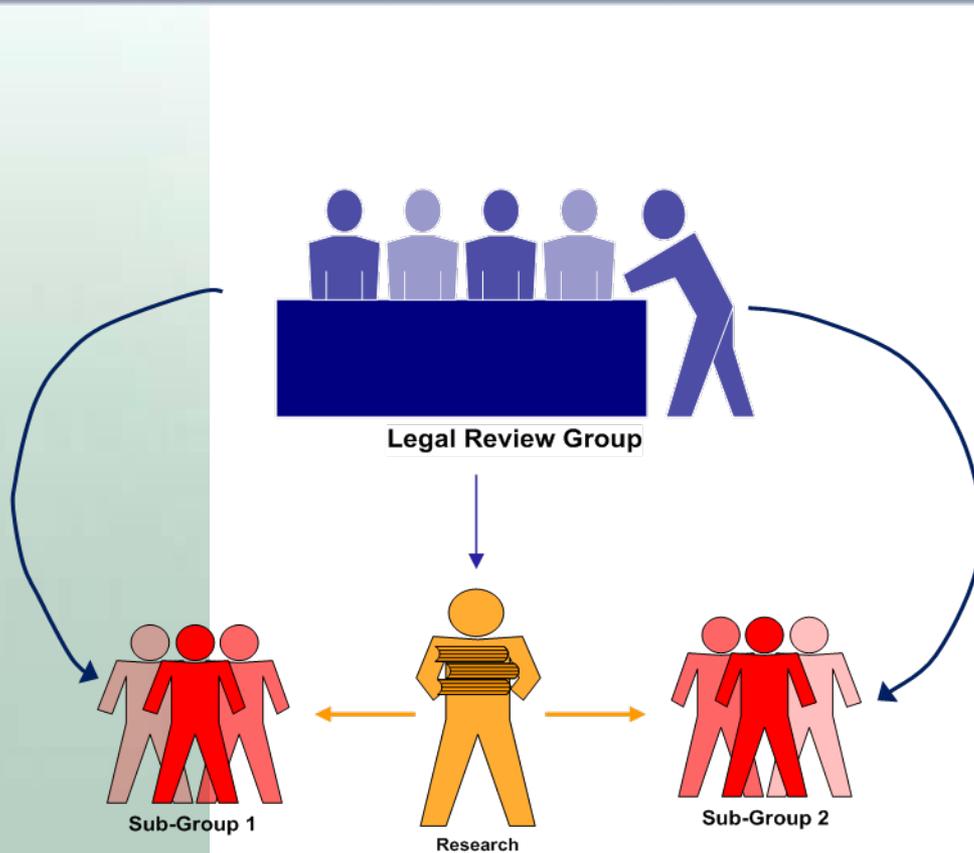
- 1. Process for Developing the Option***
- 2. Length of Time Required to Formulate***
- 3. Implementation Requirements***
- 4. Impact on Stakeholder Communities***
- 5. Feasibility***
- 6. Liability Concerns***
- 7. Ramifications of Acceptance/Rejection***
- 8. Conflicts With State or Federal Laws***
- 9. Legal Framework/Rules of Engagement***
- 10. Process for Withdrawal***
- 11. State Responsibilities***
- 12. State's Rights***
- 13. Enforcement***
- 14. Other Considerations***
- 15. Conclusions***

Interstate Analysis Approach



- Oversight provided by a Steering Committee
- Appoints a Legal Review Group to perform research and analysis
- Provides guidance on mechanisms to be reviewed and analysis process
- Provides approval of all final documents

Recommended Approach

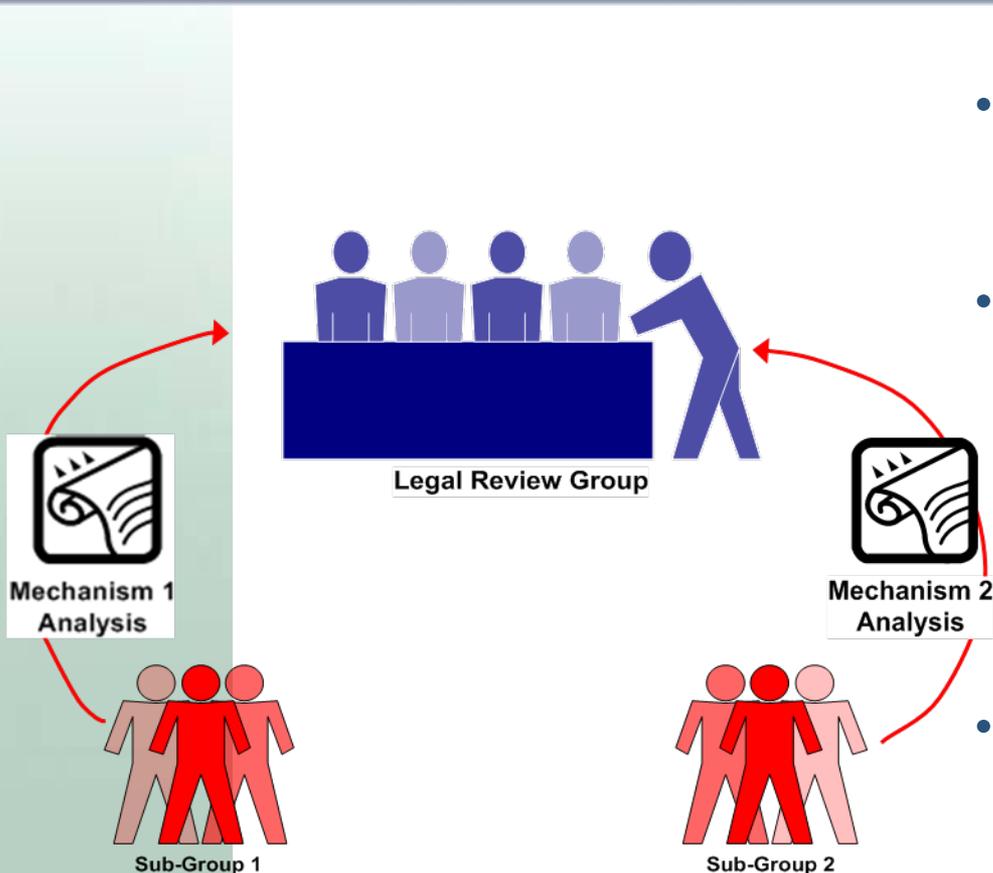


- Representation from as many stakeholders of the health care delivery system as possible, including both the public and private sectors.
- Attorneys represent a key component of this Legal Review Group; however, also include non-attorneys for stakeholder group representation.

Recommended Approach (cont'd)

- Review the definitions and assumptions sections to agree on a consistent approach to the analyses (ex., *Requesting* state—the state that is requesting medical information).
- Come to an agreement on the expectations involving the review criteria.
- Allow the initial reviews to be conducted by a subgroup of the entire Legal Review Group. This will allow the analysis of multiple mechanisms to be conducted in parallel, creating a more efficient evaluation process.

Recommended Approach (cont'd)



- Reach a consensus on the legal mechanisms the state will review
- Identify which legal mechanisms to evaluate. The nature of the templates is such that the number of alternatives is irrelevant as long as the review criteria used for the evaluation remains consistent
- Research is essential to an effective evaluation process. Search out those persons with firsthand knowledge of the research subject

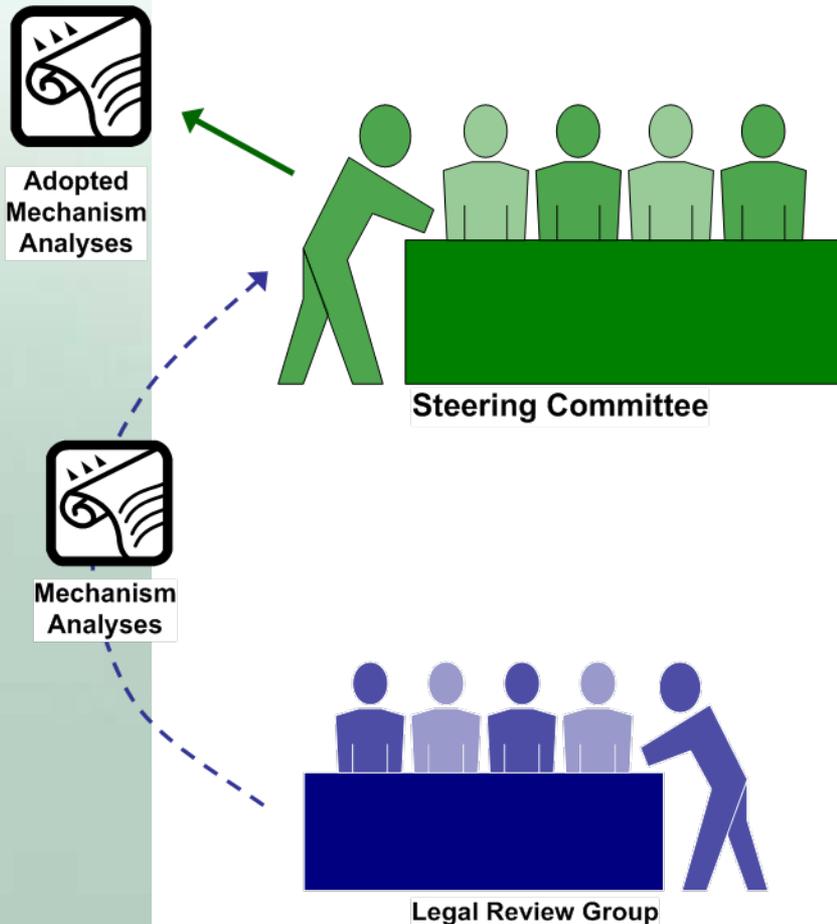
Recommended Approach (cont'd)

- Each legal mechanism should be analyzed against the review criteria such that the pros and cons of the mechanism as well as the implementation considerations are identified and well documented for the comparative summary analysis.
- Submit the reviews to the entire Legal Review Group for input, questions, comment, as well as guidance in the preparation of the conclusion of each of the selected mechanisms.

Recommended Approach (cont'd)

- Compile all the comments collected from the analysis of each mechanism onto a single template to eliminate redundancies and leave a unique set of considerations for each legal mechanism.
- The reviews should then be presented to the Steering Committee or other oversight group for approval, if applicable.

Interstate Analysis Approach



- The Legal Review Group revises the analysis of each mechanism and submits both analyses to the Steering Committee.
- The Steering Committee discusses and adopts the analyses.

Ohio Interstate Compact Template Sample

LENGTH OF TIME REQUIRED TO FORMULATE

Discussion

Unfortunately, there is no clear answer regarding the length of time required to formulate a compact, but based upon past Ohio experience, it appears that from the initial meeting of the advisory committee to the time the compact takes effect could take several years.

Pros

While formulating an effective interstate compact is expected to be a lengthy process, the end result will be a negotiated agreement among the participating states, which would hopefully offset later delays occasioned by individual states' objections to the provisions of the compact. In other words, presumably the states that agree to and execute the compact will not thereafter seek to challenge its terms.

Cons

Resolution of the issue and effective transfer of health and medical information will not be immediate under this process. For example, the negotiation and approval of the Great Lakes-St. Lawrence River Basin Water Resources Compact took 7 years from the initial stages through Congressional approval in August 2008.

Interstate Compact Consolidated Sample

LENGTH OF TIME REQUIRED TO FORMULATE

Discussion

- Ohio indicated that it could take 2–7 years.
- California and Illinois cited CSG study discussing around 5 years.

PROs

Illinois

- Process provides enough time to examine issues.

California

- The more that policy makers are interested, the quicker it will get done.

Ohio

- Length of process could offset later problems with compact terms.

CONs

Illinois

- Process could get bogged down.
- Removal of HIE barrier delayed.

Ohio

- Removal of HIE barrier delayed.



Consolidated Summary of Interstate Mechanisms

Intrastate and Interstate Consent Policy Options Collaborative **CONSOLIDATED SUMMARY** **ANALYSIS OF INTERSTATE MECHANISMS**

	Specific Issues	INTERSTATE COMPACT	UNIFORM LAW	MODEL LAW	CHOICE OF LAW
1	<p>PROCESS FOR DEVELOPING THE OPTION: For each of the four proposed mechanisms, identify the processes your state must complete in order to implement each proposed mechanism. The processes may help identify the pros and cons of using a particular mechanism and may well vary according to each state's law(s).</p>	<p>Legislatively authorized or appointed commissioners are chosen to develop a compact. Informal group with subject matter expertise. Eventually, need legislative support.</p> <p><i>The Council of State Governments</i> defines an interstate compact as "a contract between two or more states. It carries the force of statutory law and allows states to perform a certain action, observe a certain standard or cooperate in a critical policy area. Generally speaking, interstate compacts:</p> <ul style="list-style-type: none"> • establish a formal, legal relationship among states to address common problems or promote a common agenda; • create independent, multi-state governmental authorities (such as commissions) that can address issues. 	<p>The process for creating a uniform law begins with the National Conference of Commissioners on Uniform State Laws (NCCUSL) Committee on Scope and Program. It receives suggestions from a variety of sources, such as, the uniform law commissioners, state government entities, the organized bar, interest groups and private individuals. This committee can then create a study committee to review the issue and report back or make recommendations to the Executive Committee.</p> <p>Although another organization may refer to a legislative proposal as being "uniform," Uniform Laws are generally understood to be those adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). It also refers to</p>	<p>There are different processes for developing model laws, based upon the different drafting entities. The process for creating a model law could be a lengthy process. Then it is up to the states to determine what parts of the model laws they choose to enact. And the model law would go through the legislative process.</p> <p>Unlike a "uniform law," Model Acts can be those adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) - or by other associations and interest groups. NCCUSL's standing as promulgator of Uniform Laws and Model Acts stems from the direct participation of every state in its deliberations.⁷ It was</p>	<p>A choice of law provision in a contract, between entities that are exchanging personal health information interstate, would require an analysis of the laws to the two states, and consistency. Statutory choice of law would require consensus building to develop an inclusive choice of law or the choice of law could be designed to only support state law.</p> <p>Choice of law provisions are a mechanism for eliminating uncertainty and can prevent potential disputes regarding the law that governs a particular transaction. Choice of law provisions might be simple or complex. For example, the provision may simply select one state's labor, discrimination, and similar laws to govern all disputes that may arise out of the</p>

Lessons Learned

- The analysis, regardless of the mechanism, must address the issue of liability.
- How the mechanism is legally structured affects the cost and political viability.
- No option will eliminate all barriers to interstate exchange.
- The mechanism needs to be completely uniform in its approach and acceptance.
- Interstate Compacts and Uniform Laws represented the best options for adoption by the majority of states.

Measurements of Success

- Develop a clear understanding of the legal options and how they affect the state.
- Generate consensus on the best solution based on the analysis being conducted by a broad stakeholder base.
- Understand the legislative challenges associated with implementing the legal mechanisms.

Measurements of Success (cont'd)

- Create collaboration with neighboring states interested in similar exchange principles.
- Establish a replicable process that can be used to conduct similar analysis of the requirements for intrastate exchange between state agencies and private exchange initiatives.

Collaborative Participants

- Interstate Analysis
 - Ohio (Co-Chair)
 - Illinois
 - California
- Intrastate Analysis
 - California (Co-Chair)
 - North Carolina



Questions?



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Thank You for Attending

- Please visit <http://healthit.hhs.gov/HISPC> for full access to all of the products discussed today as well as information about the other HISPC collaborative products.
- Additional materials are being posted as they become available throughout the months of June and July.