

# INTRASTATE AND INTERSTATE CONSENT POLICY OPTIONS COLLABORATIVE

## APPENDIX G: COMPARATIVE ANALYSIS OUTPATIENT CARE COORDINATION

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Health Information Security & Privacy

**COLLABORATION**



## **Committee**

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

## **Scenario Five**

For this case, the consumer is 90 years old with a history of dementia and would be providing permission to allow her health information to be placed into an interoperable electronic health record that is accessible across more than one health care organization. At least the following four health care organizations would be able to access, store, manage and exchange her health information: (1) the inpatient hospital where she received hip replacement surgery; (2) her primary care physician; (3) the hospital's outpatient care coordinator; and (4) a home health care provider hired by the outpatient care coordinator. The health information shared includes records pertaining to the consumer's mental health 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 G-1. Definitions**

Specific Issue	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/Exceptions	Opt In
Definitions	<p><b>Auto In.</b> 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><b>Auto In with Choice.</b> 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><b>Auto Out with Granular Choice</b> Consumer’s health information is <b>not</b> 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><b>Auto In with Granular Choice</b> 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><b>Auto Out with Choice</b> Consumer’s health information is <b>not</b> 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 G-2. Quality of Care**

Specific Issues	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/Exceptions	Opt In
<p>Consumer wants effective treatment balanced with protection against unauthorized access to her health information.</p> <p>Provider wants to deliver effective treatment in the most timely and efficient way.</p> <p>Quality of care in this scenario is measured by the availability of information concerning the consumer's ability to effectively stay in her home while recovering from inpatient surgery. The consumer has dementia and is unable to care for herself without the assistance of home health providers.</p>	<ul style="list-style-type: none"> <li>+ Maximum access to needed information should improve quality of care and decrease risk of harm due to errors</li> <li>- No choice over who may use and exchange records may deter consumers from accessing health care providers</li> <li>- Concern that minimum necessary exchange of information may not be observed for purposes other than treatment (even though this scenario assumes release of information is only for treatment) might increase risk that consumer would not seek follow-up (home health) care</li> <li>- Concern about release of mental health information or psychotherapy notes might increase this risk as well</li> </ul>	<ul style="list-style-type: none"> <li>+ Expected high volume of participation because consumers are offered some choice regarding release of their information—so those consumers who would not otherwise seek care for fear that their health information would be electronically exchanged are more likely to seek care if they understand that they are allowed to opt out</li> <li>- Lesser quality of care: the quality of the care coordination is directly dependent on the completeness and accuracy of the health information shared by all of the providers involved in consumer's care, including information concerning the consumer's inpatient care. If the consumer opts out of either the exchange of information from her primary care physician or from the home health care agency, then the outpatient care coordinator will not have a complete record with which to develop an outpatient care plan. If the home care providers are unaware of the consumer's mental health history because the consumer opted out of the exchange of the physician's records, the lack of information may decrease the effectiveness of the care that is provided to the consumer in her home.</li> </ul>	<ul style="list-style-type: none"> <li>- Possibility of the least amount of information being shared of all alternatives, which may result in the lowest quality of care</li> </ul>	<ul style="list-style-type: none"> <li>+ Could enable greater consumer participation in the HIO than opt out</li> <li>+ Allows increased specificity of permission: In this scenario, the consumer may choose to opt out only with respect to the sharing of her mental health information or to allow the sharing only to certain providers for the purposes of care coordination; thus, more information is likely to be available for exchange than with opt out</li> <li>- More complex than opt out, and it is possible that different providers will have fragmented, incomplete information about the consumer's health care history and status, thereby leading to higher risk of treatment errors</li> </ul>	<ul style="list-style-type: none"> <li>+ Likely that even greater participation than opt out with exceptions</li> <li>- Same as opt out except: potential lesser quality of care due to likely decreased participation, since the default is that the consumer's health information is unavailable</li> <li>- In this scenario, since consumer is elderly and suffers from dementia, she may not know of or be able to exercise her choice to opt in, in the absence of a consumer representative</li> <li>- Providers will need to seek the consumer's consent or treat her as a new consumer and therefore gather information about her history at the time of encounter, thereby increasing the risk of error and treatment delays</li> <li>- Needed information for emergency care may not be available without consent or presence of consumer representative</li> </ul>

**Table G-2. Quality of Care (continued)**

Specific Issues	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/Exceptions	Opt In
Quality of care	NA	<ul style="list-style-type: none"> <li>- Each provider needs to know whether the consumer's record is complete and, if not, what information is missing</li> <li>- There is an increased potential for misdiagnosis or error in an emergency if the consumer is unable for some reason to keep track of where she has opted out and inform a provider about the potentially incomplete record</li> </ul>	NA	NA	NA

Note: + = pro; - = con.

**Table G-3. Business Practice Impact**

Specific Issues	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/Exceptions	Opt In
Providers want HIE system that minimizes changes in work flow, minimizes investments in technology, and decreases paperwork and administrative burdens.	<p><b>Inpatient hospital:</b></p> <ul style="list-style-type: none"> <li>+ Maximizes ease and efficiency of sharing health information that supports continuity of care</li> </ul> <p><b>Physician:</b></p> <ul style="list-style-type: none"> <li>+ Maximizes ease and efficiency of responding to requests to share consumer health information with outpatient care coordinator</li> </ul> <p><b>Outpatient care coordinator:</b></p> <ul style="list-style-type: none"> <li>+ Maximizes ease of making referral to home health care provider</li> </ul> <p><b>Home health care provider:</b></p> <ul style="list-style-type: none"> <li>+ Maximizes ease of obtaining needed health information to ensure appropriate level of care</li> </ul> <p><b>Inpatient hospital:</b></p> <ul style="list-style-type: none"> <li>- Maximizes burden to educate and assure consumers that their health information is protected from unauthorized use</li> <li>- Burden to keep any psychotherapy notes separate in records absent consumer's authorization to share them</li> </ul>	<ul style="list-style-type: none"> <li>- Will require one registration and care coordination process for those consumers who do not opt out and a second process for those who opt out</li> <li>- Can all providers afford to assist/educate consumers in making the decision whether to opt out?</li> <li>- When are these decisions made?</li> <li>- A decision made at the ER will likely be different than a decision in a non-emergency setting</li> <li>- From an operational perspective, the provider must develop mechanisms used to ensure that the consumer's choice is implemented and a tracking mechanism to distinguish between consumers who have opted out and those who have not exercised that choice.</li> <li>- Providers must also develop educational materials that inform consumers of their rights to opt out and the implications of opting out.</li> </ul>	<ul style="list-style-type: none"> <li>- Same as opt out with exceptions</li> <li>- Maximum business impact for the least amount of participation</li> </ul>	<ul style="list-style-type: none"> <li>- Same as opt out—except has greater potential to cause confusion and increased need for education and tracking mechanisms</li> <li>- Increased costs due to the above</li> </ul>	<ul style="list-style-type: none"> <li>- Same as opt out</li> </ul>

(continued)

**Table G-3. Business Practice Impact (continued)**

Specific Issue	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/Exceptions	Opt In
Business practice impact	<p><b>Physician:</b></p> <ul style="list-style-type: none"> <li>- Maximizes burden to educate and assure consumers that their health information is protected from unauthorized use</li> <li>- May be in violation of North Carolina privacy laws regarding release of mental health records</li> </ul> <p><b>Outpatient care coordinator:</b></p> <ul style="list-style-type: none"> <li>- Same as physician and inpatient hospital</li> </ul> <p><b>Home health care provider:</b></p> <ul style="list-style-type: none"> <li>- Same as inpatient hospital</li> </ul>	<ul style="list-style-type: none"> <li>- The provider’s opt out policy should be clear regarding expiration dates, liability issues, and procedures for how the consumer may opt back in</li> </ul>	NA	NA	NA

Note: + = pro; - = con.

**Table G-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 HIE and to trust that the HIE 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 consumers' health information.</p> <p>Provider wants other providers participating in the HIE to safeguard information and share information that is accurate, complete, and relevant to the purpose for which it is to be used.</p>	<ul style="list-style-type: none"> <li>+ Perception of public trust is dependent on the establishment and maintenance of trust relationships with consumers and among participating providers</li> <li>- Maximum perceived threat to consumer's right to privacy may lead to low trust levels</li> </ul>	<ul style="list-style-type: none"> <li>+ Consumer: More trust because choice to opt out is provided, so less perceived threat to privacy</li> <li>- Provider: may have less trust because more risk of incomplete records</li> <li>- Is it realistic to assume that consumers can make these decisions, and that the decisions will be meaningful when made?</li> <li>- Consumer: may have less trust because more education needed to understand the consent model and its implications</li> </ul>	<ul style="list-style-type: none"> <li>+ Consumer: Maximum trust because maximum choice</li> <li>- Provider: Least trust due to consumer's amount of control over what information is released to whom</li> </ul>	<ul style="list-style-type: none"> <li>+ Consumer: More trust because offers consumer variety of choices</li> <li>- Provider: less trust because providers are unable to access health information that is complete and accurate and may never know if they don't have complete information</li> <li>- Is it realistic to assume that consumers can make these decisions?</li> <li>- Consumer: variety of choices may confuse consumers, resulting in distrust of the system</li> </ul>	<ul style="list-style-type: none"> <li>+ Consumer: Given more choice, so likely more trust</li> <li>- Less trust due to potential lower participation in the HIO and increased likelihood that the consumer's available health information is incomplete and inaccurate</li> </ul>

Note: + = pro; - = con.

**Table G-5. Health Care Cost Avoidance**

Specific Issue	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/Exceptions	Opt In
Providers and consumers want less paperwork, improved communication, reduced duplicative tests, and increased accuracy and effectiveness.	<ul style="list-style-type: none"> <li>+ Maximizes ability to provide continuity of care and coordination of outpatient care of elderly consumer with dementia</li> <li>- If consumer avoids seeking home health care or refuses outpatient care coordination due to limited rights to privacy concerns, the consumer's health status may deteriorate, leading to higher costs.</li> </ul>	<ul style="list-style-type: none"> <li>+ More savings compared to the other choice due to more volume than the other choice alternatives</li> <li>- Less savings and less cost-effective compared to no choice</li> <li>- Some providers may not be able to afford added costs incurred in assisting/educating consumers about this choice and in implementing the tracking mechanism.</li> </ul>	<ul style="list-style-type: none"> <li>- Same as opt out with exceptions</li> <li>- Least cost-effective due to likely low participation in the HIO and maximum complexity</li> </ul>	<ul style="list-style-type: none"> <li>- Same as opt out, except:</li> <li>- Less cost-effective than opt out, due to consumer's variety of consent options</li> <li>- Greater need for consumer and provider education</li> <li>- Greater need for system safeguards</li> </ul>	<ul style="list-style-type: none"> <li>- Less participation in the HIO; more complexity to train and advise about the options</li> <li>- Less cost-effective than other alternatives</li> </ul>

Note: + = pro; - = con.

**Table G-6. Liability and Laws**

Specific Issue	No Choice	Opt Out	Opt In w/Restrictions	Opt Out w/Exceptions	Opt In
Liability and laws	<ul style="list-style-type: none"> <li>- Is consumer competent to consent to treatment? If not, is there an appropriate legal representative to give consent? (See N.C.G.S. § 90-21.13(c))</li> <li>- Does the record contain health information acquired by a mental health facility, thus making the information confidential? (See G.S. 122C-52)</li> <li>- Do the requesting and consulting providers fall within the definition of "facility"? (See G.S. 122C-3) Are providers thus allowed to share the consumer's confidential information without the consumer's consent for purposes described in this scenario?</li> <li>- Does the consumer's record contain any psychotherapy notes? If so, HIPAA does not allow their use by or disclosure to anyone other than the creator of the notes absent the consumer's authorization, except in very limited circumstances (45 C.F.R. § 508(a)(2)).</li> </ul>	<ul style="list-style-type: none"> <li>+ If consumer opts out, no apparent violation of NC mental health laws requiring consumer consent to release mental health information except for emergency treatment</li> <li>- If consumer doesn't opt out of exchange by providers who would otherwise exchange consumer mental health information, provider may be in violation of North Carolina law (N.C.G.S. § 122C-52)</li> <li>- Will HIPAA require providers to notify other providers of the consumer's decision to opt out?</li> <li>- Will the request to opt out be deemed a request for a restriction under HIPAA?</li> <li>- Does the consumer's record contain any psychotherapy notes? If so, HIPAA does not allow their use by or disclosure to anyone other than the creator of the notes absent the consumer's authorization, except in very limited circumstances (45 C.F.R. § 508(a)(2)).</li> </ul>	<ul style="list-style-type: none"> <li>- Same as opt out with exceptions</li> </ul>	<ul style="list-style-type: none"> <li>+ If consumer opts out with respect to mental health information, no violation of North Carolina mental health laws regarding release of this information without consumer's consent</li> <li>+ Question: Can consumers opt out (either total or regarding sharing of psychotherapy notes) alone, without the consumer's specific execution of a HIPAA-compliant authorization, permit health care providers to share psychotherapy notes?</li> <li>- More potential liability due to increased potential for failure to comply with patient's consent directives</li> <li>+ Less likely to violate North Carolina mental health privacy laws, because provider's permission of consumer choice with respect to mental health information complies with these laws</li> </ul>	<ul style="list-style-type: none"> <li>- Same as opt out</li> </ul>

Note: + = pro; - = con.