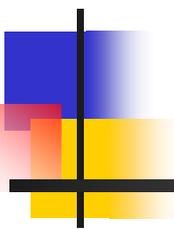
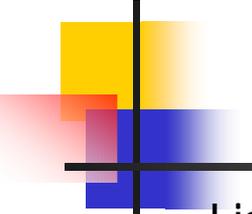


HEALTH INFORMATION  
TECHNOLOGY EXCHANGE  
ADVISORY COMMITTEE  
LEGAL AND POLICY  
SUBCOMMITTEE



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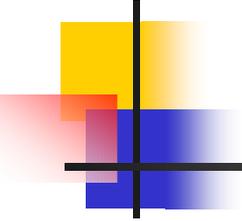
CONSENT MODEL  
RECOMMENDATION



# Subcommittee Members

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- Lisa Boyle (Attorney, Robinson & Cole)
- Charlie Covin (Chief Information Officer, Eastern Connecticut Health Network)
- Kenneth Dardick, M.D. (Private Physician)
- Michelle Wilcox Debarge, Esq. (Attorney, Wiggin & Dana)
- Lori Fourquet (Information Technology Consultant, e-HealthSign, LLC)
- Helen George (Nexus Resources, Inc. / Consumer)
- David Gladstone (Consultant, Blum Shapiro)
- Marianne Horn (Attorney, Department of Public Health)
- Phyllis Hyman (Attorney, Department of Social Services)
- Linda Kristie (IT Security Officer, Saint Mary's Hospital)
- Mark Laudenberg (Director of Medical Records, Middlesex Hospital)
- John Lynch (Executive Director, Connecticut Center for Primary Care)
- Jamie Mooney (Chief Information Officer, Norwalk Hospital)
- John Newman, Esq. (Partner, Eisner & Lugli)
- Marcia Petrillo (President, Qualidigm)
- Kelly Styles (Chief Information Officer, Connecticut Children's Medical Center)



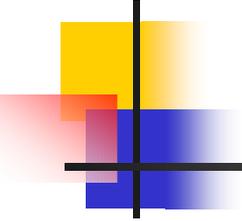
# CONSENT MODEL RECOMMENDATION

## Overall Values Considered

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- Privacy concerns
- Usefulness to Providers
- Improvement in Quality and Efficiency of Health Care
- Viability of HIE as a Business

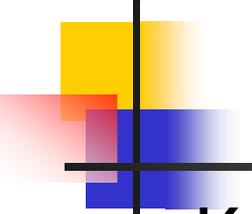
# CONSENT MODEL RECOMMENDATION



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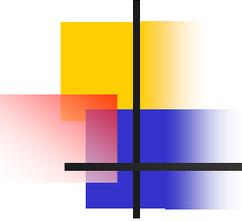
- Consideration given to all of the consent models, included review of ONC whitepaper
  - No Consent
  - Opt out
  - Opt out with exceptions
  - Opt in
  - Opt in with restrictions
- Reviewed approaches taken by various states

# CONSENT MODEL RECOMMENDATION



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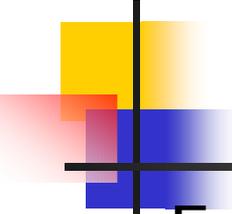
- Key concepts influencing recommendation:
  - HIE will improve quality and efficiency of health care services by providing information on a real time basis
  - To achieve this, HIE structure should maximize the amount of information *collected* by the HIE
  - *Disclosure* of information from the HIE should follow existing federal and state law



# CONSENT MODEL RECOMMENDATION

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- Challenges - Education, education, education
  - Although the model follows HIPAA and other existing laws, there is a need to educate the AC, providers and consumers re: existing law and minimal impact the HIE will have on practices already mandated
  - Once implemented, documentation related to the HIE must also clearly inform consumers how HIE works



# CONSENT MODEL RECOMMENDATION

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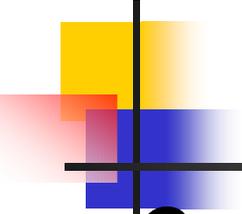
## Existing Confidentiality Laws Generally

- HIPAA

- Generally allows use and disclosure of PHI for treatment, payment & health care operations (“TPO”)

- Specific Federal and State laws providing heightened confidentiality (“Sensitive PHI”)

- HIV
- Alcohol & substance abuse
- Mental health
- Abortion
- Other



# CONSENT MODEL RECOMMENDATION

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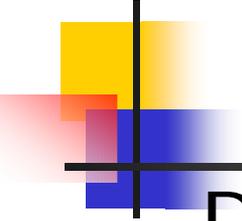
## **Collection of PHI into HIE**

- Participation in the HIE is optional for providers
- Providers cannot retrieve PHI from the HIE unless they participate
- PHI flows from participating providers for all of the providers' patients into the HIE (no exception)

# CONSENT MODEL RECOMMENDATION

## Collection of PHI into HIE

- Business associate agreement with each participating provider
  - meets HIPAA and serves as participation agreement, with terms and conditions for participation in HIE
- Master Patient Index (with unique identifying number for each patient) (“MPI”) and Patient Registry (utilizing the MPI and the locations where data is stored)
  - MPI and Patient Registry maintained on separate servers for security reasons
  - Patient Registry uses MPI to identify locations of PHI

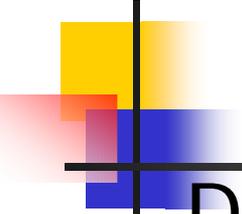


# CONSENT MODEL RECOMMENDATION

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## Disclosure of Health Information from HIE

- HIPAA allows use and disclosure for TPO except:
  - Sensitive PHI
  - Restriction granted and accepted by provider
- Provider transferring to HIE identifies Sensitive PHI and any restriction granted
- Uniform policy on restrictions to be adopted

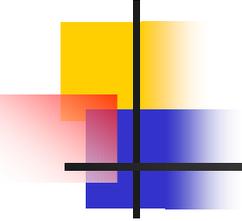


# CONSENT MODEL RECOMMENDATION

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## Disclosure of Health Information from HIE

- HIE will disclose PHI for TPO as permitted by HIPAA unless:
  - Sensitive PHI
  - Restriction imposed by patient
  - Patient elects not to participate in HIE
- Disclosure for TPO (not subject to exceptions above) determined according to existing federal and state laws

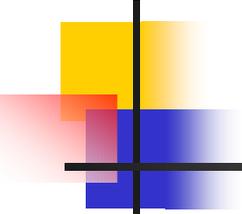


# CONSENT MODEL RECOMMENDATION

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## Disclosure of Health Information from HIE

- If patient signs election not to participate in HIE (i.e. no disclosure by HIE), such election is global (all providers)
- No PHI of patient electing not to participate in HIE will be disclosed to any party by the HIE, except as required by law (i.e. public health reporting requirements, etc.)
- Latest election form signed by patient controls



# CONSENT MODEL RECOMMENDATION

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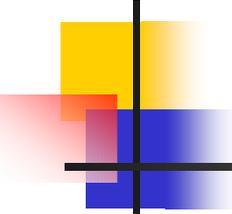
## Disclosure of Health Information from HIE

- Disclosure of Sensitive PHI determined according to existing federal and state laws governing such disclosure
  - standard form, HIPAA compliant authorization will be developed for HIE
- Sensitive PHI will be disclosed by HIE only if proper authorization is on file at HIE

# CONSENT MODEL RECOMMENDATION Overview

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- Provider elects **participation (or not)**
- **Collection**
  - **All PHI of participating providers** collected
- **Disclosure**
  - PHI for TPO disclosed unless...
  - Sensitive PHI – need specific authorization/ consent
  - Restriction
  - Patient election not to participate in HIE



# CONSENT MODEL RECOMMENDATION

## Core Consent Options

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- **No consent**

- No consent required for collection or disclosure but issues re: state & federal laws

- **Opt-out**

- Presumption all PHI is collected, subject to ...
- Patient ability to opt out of either 1) collection (PHI never enters) or 2) disclosure (enters but no disclosure)

- **Opt-out with exceptions**

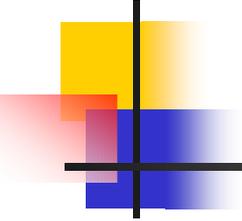
- Presumption all PHI is collected, subject to...
- Patient can 1) exclude select categories of PHI / specific data elements; 2) limit disclosure to specific providers; and/or 3) limit disclosure for specific purposes

- **Opt-in**

- No PHI collected or disclosed without patient consent

- **Opt in with restrictions**

- No PHI collected or disclosed without patient consent
- Patient can 1) include only certain categories of PHI / specific data elements; 2) allow disclosure only to specific providers; and/or 3) allow disclosure for specific purposes



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“In practice, however, there are as many choice model permutations as entities that participate in electronic exchange. Each entity (regardless of scale) encounters who, what, why, and when decisions, and resolves them based on its own unique set of legal, cultural, political, and other contextual circumstances.”