HEALTH INFORMATION TECHNOLOGY EXCHANGE – CONNECTICUT (HITE-CT)

March 21, 2011

LEGAL AND POLICY COMMITTEE

Adopted Policy

HITE-CT Legal and Policy Committee Members

- Lisa Boyle (Attorney, Robinson & Cole) - Chair
- Ellen Andrews (CT Health Policy Project)
- Charlie Covin (Chief Information Officer, Eastern Connecticut Health Network)
- Kenneth Dardick, M.D. (Private Physician)
- 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)
- Brenda Kelley (AARP Connecticut)
- Mark Laudenberger (Director of Medical Records, Middlesex Hospital)
- John Lynch (Executive Director, Connecticut Center for Primary Care)
- Marcia Petrillo (President, Qualidigm)
- Lori Fourquet (Information Technology Consultant, e-HealthSign, LLC)
- Kelly Styles (Chief Information Officer, Connecticut Children's Medical Center)
- Moses Vargas (Robinson & Cole, LLP)
- Michelle Wilcox Debarge, Esq. (Attorney, Wiggin & Dana)

ONC Whitepaper - Consent Options

- **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) <u>or</u> 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

HIE Consent Models Deployed

MODEL (by State)	NUMBER
Opt IN	3
Opt OUT	13
None or undocumented	34

www.HITRC-Collaborative.org

MODEL (by HIE)	NUMBER
Opt IN	36
Opt OUT	81
Unsure	27
No Answer	56

www.ehealthinitiative.org (Annual Survey)

Values Considered

- Disclosure - follow existing federal and state laws
- Patient care –
  - Improvement in quality/maximize potential of data
  - Efficiency – impact on care workflows/ availability in real time
- Patient privacy protections
- Usefulness to providers
- Viability of HIO as a business
- Capabilities/readiness of systems
- Support “Meaningful Use”
- Build on Federal NHIN infrastructure

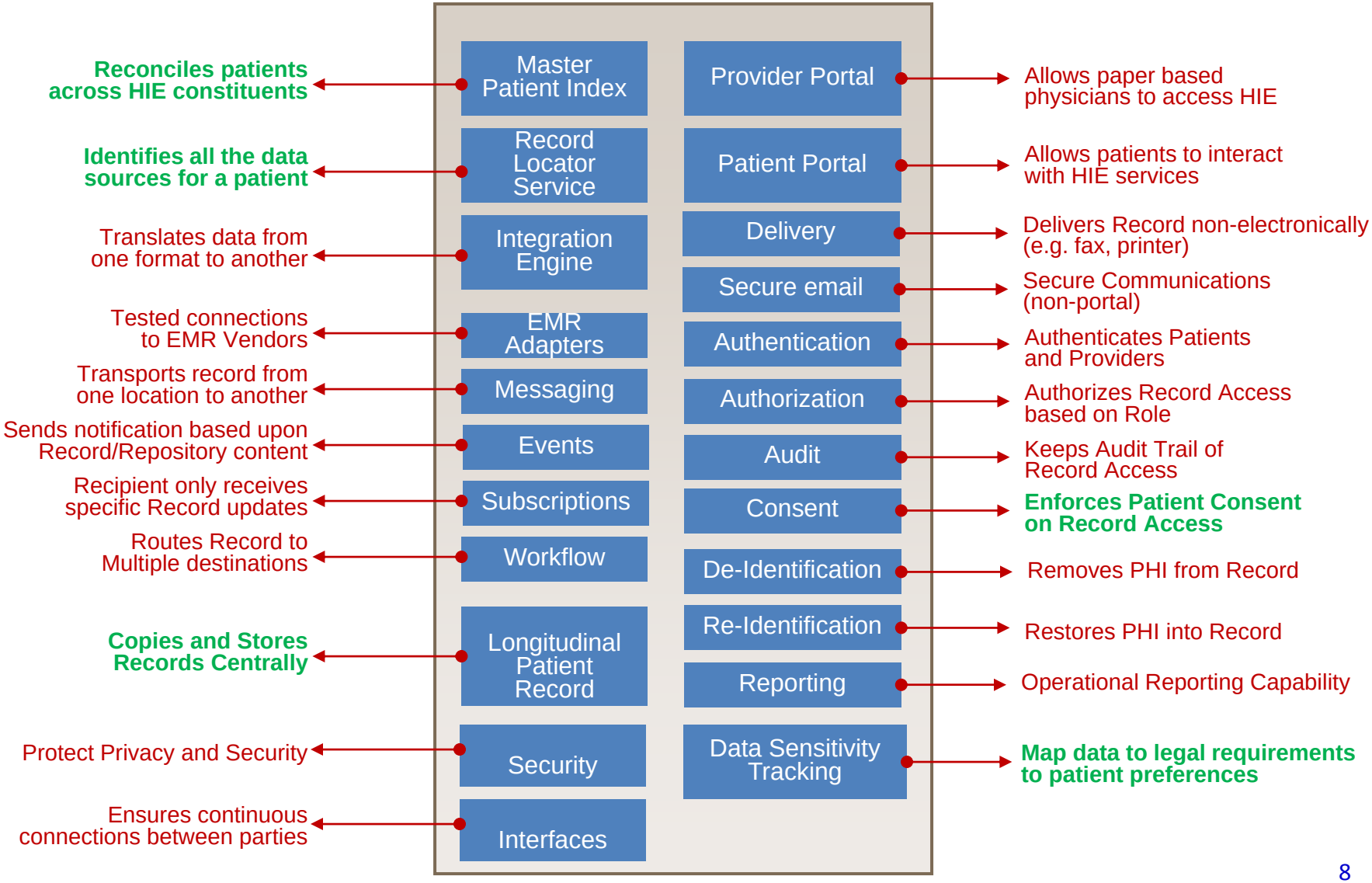
Existing Federal and State Laws

- HIPAA
  - Generally allows use and disclosure of PHI for treatment, payment & health care operations ("TPO")
  - Business Associate Agreements (BAA) between parties
  - Restrictions granted and accepted by provider
- HIPPA Privacy Rule covers HIO as "Business Associate"
- Specific Federal and State laws require heightened protections ("Sensitive PHI")
  - HIV
  - Alcohol & substance abuse
  - Mental health
  - Abortion
  - Other

Prioritize Use Cases

- Treatment - Clinical Care
  - Consultation & transfer of care
  - Ancillary Results reporting
  - Remote monitoring
  - Patient-Provider secure messaging
  - Personalized health care
  - Immunization & response management
  - Emergency responder-EHR
  - Medication Management
  - Consumer registration & medication history
  - Break Glass
- Payment
- Operations
- Public Health Reporting/Biosurveillance
- Quality Reporting
- Patient Portal (Consumer empowerment/access)
- Disease Management – Not addressed
- Data aggregation - Not addressed
- Research – Not addressed
- Marketing – Not addressed

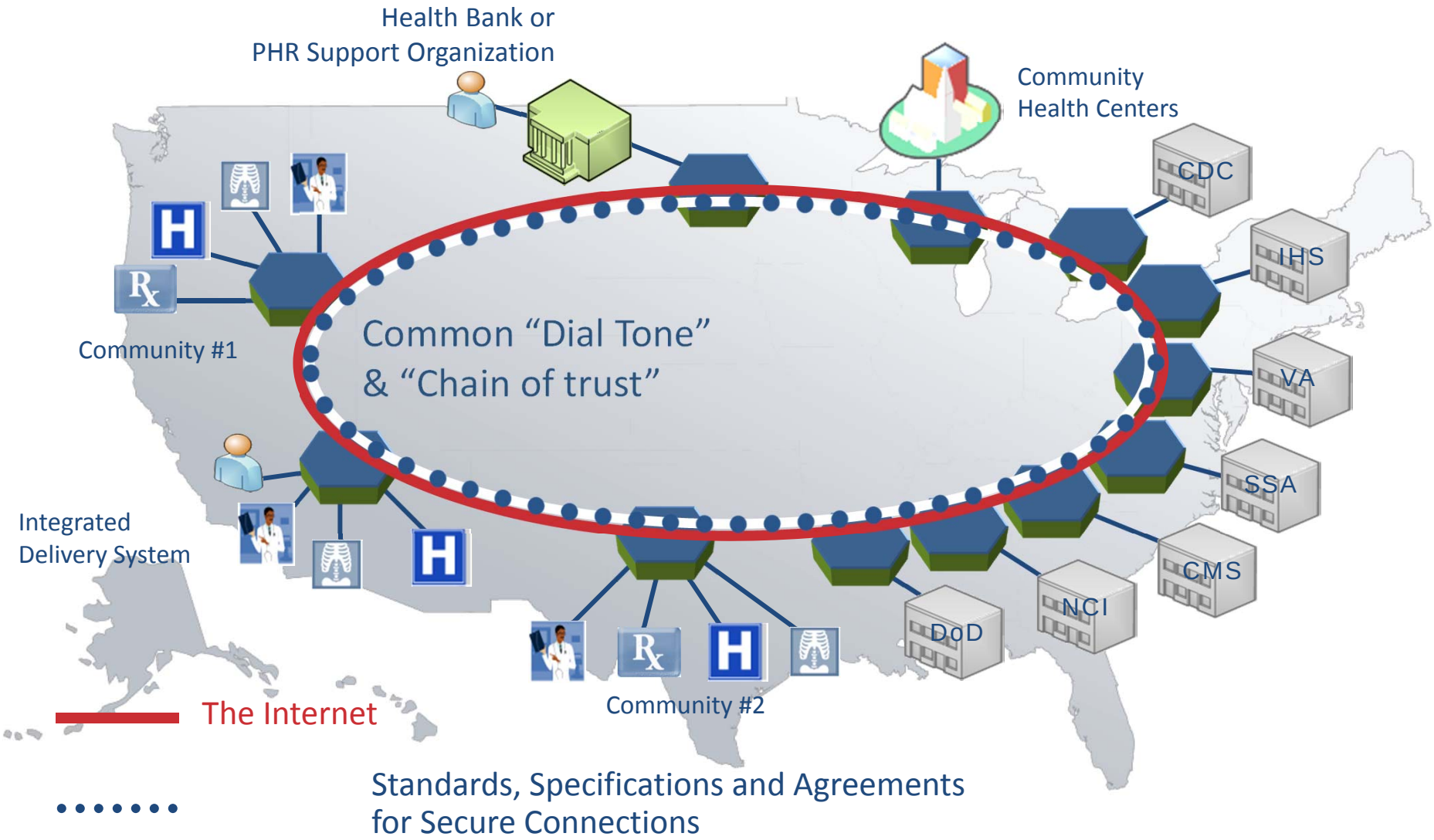
Support Health Information Exchange Functionality



Support Meaningful Use

- Capability to exchange key clinical information among providers of care and patient authorized entities
- Provide summary care record for each transition of care and referral
- Perform medication reconciliation at relevant encounters and transitions of care
- Incorporate clinical lab-test results into EHR as structured data
- Use computerized physician order entry (CPOE) (Stage 1 – just medications)
- Capability to submit electronic data to immunization registries
- Capability to provide electronic syndromic surveillance data to public health agencies

Build on NHIN Infrastructure



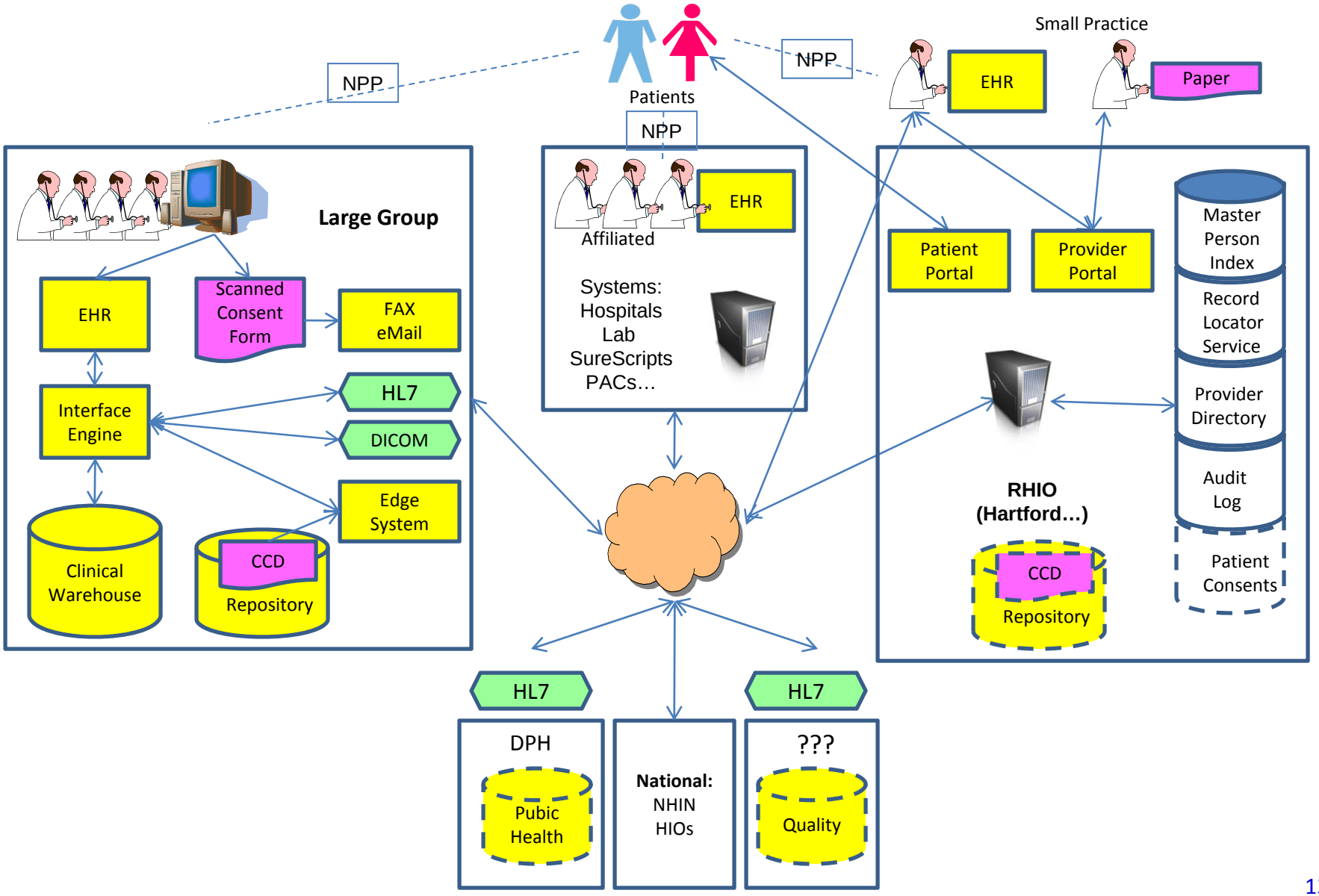
Public Process

L&P (2/2; 2/9; 3/10; 3/24	Multiple open discussions; 3/24 Consensus of Group 1)Opt out most viable; 2) HIE has authority to receive data; 3) Data needs to be available for patient care
L&P: 4/28; 6/2; 6/9; 6/15	Continued discussions
Advisory Board: 2/22; 3/15; 5/3	L&P Subcommittee updates; Gartner GAP
Advisory Board 6/21	L&P recommendations accepted; To Public Hearing
Public Hearing 6/23	Comments received
L&P: 7/13; 7/20	Comments reviewed
Advisory Board 7/12	L&P report on model; public comments; Advisory supports consent model
Advisory Board: 8/16	Strategic Plan (including consent) reviewed; put out to public comment
Public 8/12-8/27	Public Comment Period included two public forums
Full Advisory 9/20	Minor consent model revisions; Full **Strategic plan (V1) approved** for submission to ONC on 9/27
HITE-CT Board 12/13	**Strategic Plan (V2)** revision (including consent model) reviewed, accepted for submission to ONC
HITE-CT Board 2/15/2011	Revised **Strategic Plan (V2)** reviewed and accepted for submission to ONC

HITE-CT Policy Overview

- Follow existing federal and state laws
- Providers elects **participation** (or not) in HITE-CT
  - Agrees to business, technical, policy rules/conditions (BAA)
  - Supplies information for all patients
- Participating providers **provision**
  - Patient indexing data "MPI" (name, address, date of birth…)
  - Record location data "RLS" (what records; how to retrieve)
  - Patient Summary Documents (CCD) when requested by HITE-CT
- HITE-CT **Discloses CCD Summary Documents** to providers
  - For Treatment, Payment, Operations (per HIPAA)
    - Summaries do NOT include all patient data
    - Unless CCD contains Sensitive PHI data (per state laws)
    - Sensitive PHI data requires specific patient authorization
  - For Public Health reporting (per state laws)

HITE-CT Hybrid HIE Model (push/pull)



Other Process Considerations

- Adopt Uniform policy on restrictions
- Provider provisioning to HIO identifies Sensitive PHI and any restriction granted
- HIE will disclose PHI for TPO as permitted by HIPAA unless:
  - Sensitive PHI
  - Restriction imposed by patient
  - Patient elects not to participate in HIO
- If patient signs election not to participate in HIO (i.e. no disclosure by HIE), such election is global (all providers)
- No PHI of patient electing not to participate in HIO will be disclosed to any party by the HIO, except as required by law (i.e. public health reporting requirements, etc.)
- Most recent election form signed by patient controls
- Disclosure of Sensitive PHI determined according to existing federal and state laws governing such disclosure
  - standard form, HIPAA compliant authorization will be developed for HIO
- Sensitive PHI will be disclosed by HIE only if proper authorization is on file at HIO
- Break Glass in emergencies; Audit
- Include details in HIPAA Notice of Privacy Practices
- Opt-OUT doe not supersede federal/state law.

Challenge: Education, Education….

Although the model follows HIPAA and other existing laws, there is a need to educate the legislature, providers and consumers re:

- Existing laws
- How the HIE works
- Impact the HIE will have on care/practice