

State HIE Consent Policies: Opt-In or Opt-Out

Last Updated September 2016

The *State HIE Consent Policies: Opt-In or Opt-Out* table provides a 50 state plus the District of Columbia comparative overview of patient consent policies, enacted either through legislation or agency guidance, that may govern health information exchanges (HIE) operating in each state. The table below presents the following information:

Type of Consent Policy – This column briefly describes the type of consent policy that a state has adopted. Broadly, these policies fall under two categories: opt-out – patients may be automatically enrolled in the HIE but are given the opportunity to opt out of having their information stored and/or disclosed by the HIE; and opt-in – patient consent is required in order for patient health information to be stored and/or disclosed by the HIE. However, some state policies fall outside of these two broad categories, in which case descriptions of the policies are included.

Source of Consent Policy – This column identifies the most authoritative source that articulates the patient consent policy: statute, regulation, or a state agency-produced policy document. A statute is a formal written enactment of the state legislative body that has the force of law. A regulation is a rule of order prescribed by an authorized body (e.g. state agency) that also has the force of law. A state-agency produced policy document provides guidance for the implementation or operation of a particular statute or regulation, but does not have the force of law. Statutes and regulations are the most authoritative sources of law in a state and must be complied with; state agency-produced policy document provide explanatory guidance to assist with compliance. The source is hyperlinked to the relevant statute, regulation, or policy document for that state.

State Involvement in Generating the Consent Policy – For statutes and regulations, the source of the consent policy is clear (state legislatures and state agencies, respectively). For states where the most authoritative source articulating the consent policy is a state agency-produced policy document, this column provides information on the connection between the state government and the agency or organization that produced the consent policy. The following types of policies are not considered to be produced by a state agency and as such are NOT included, even where the HIE is state-designated: Policies articulated by HIEs that are neither a state government entity nor actively run, overseen, or managed by a state government entity; Policies articulated by HIEs in states that only provide funding for HIE activities without conditioning the funding upon adherence to state-approved patient consent requirements; Policies articulated by HIEs in states where state actors may participate as stakeholders on the board of the state-designated HIE but do not have any powers of oversight or approval.

Statewide Applicability – This column indicates whether or not a state’s consent policy applies statewide (i.e., to all HIEs operating in the state). Most state HIE consent policies that do not apply statewide only apply to the state-run HIEs in those states.

Scope of Consent Policy – This column describes the breadth of the state HIE consent policy’s applicability. When a consent policy applies statewide, it usually applies in one of the following ways: 1) by giving rights to all patients in the state; 2) by requiring healthcare providers to abide by the consent policy; or 3) by requiring health information organizations in the state to abide by the consent policy. When a consent policy does not apply statewide, this column describes the organization(s) required to follow the state HIE consent policy.

Details About Consent Policy – If available from the source of the state HIE consent policy, this column provides a description of the depth of the consent policy and how it works.

Commonly Used Acronyms:

HIE – Health Information Exchange; HIN – Health Information Network; HIO – Health Information Organization; PHI – Protected Health Information
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Alabama (AL)	Opt-out	State Policy	Policy was created by Alabama Health Information Advisory Commission, which is a voluntary effort chaired by the Alabama Medicaid Agency (as the state-designated entity). Compliance with and adherence to these policies and procedures will be monitored and enforced by the AHIE staff under the guidance of the Governing Authority.	N	Applies to all "participants" in state government-established HIE and participant providers have the burden of ensuring that patients are given the right to opt-out and maintain relevant documentation.	Alabama Health Information Exchange, Policy and Procedures 15 (2012) - Alabama HIE Policy states that disclosures of PHI through One Health Record for purposes of treatment, payment and operations are permitted without patient authorization, but that patients have the right to opt-out from participating in the electronic sharing of his/her PHI through One Health Record. The decision to opt-out applies globally to all of the individual's PHI, but an individual cannot opt-out of disclosures of information that are required by law. Individuals can also revoke their opt-out decisions.	--
Alaska (AK)	Opt-out	Statute	--	N	Applies to the HIE established by the Alaska Department of Health and Social Services.	Alaska Stat. § 18.23.310 - The statute requires that the Department of Health establish procedures to allow those individuals with health records in the HIE system to opt out of it.	--
Arizona (AZ)	Opt-out	Statute	--	Y	Applies to all HIOs, which are defined under Arizona law as "organization[s] that oversee[] and govern[] the exchange of individually identifiable health information among organizations according to nationally recognized standards." The definition of HIO under AZ law excludes health plans, providers, and exchange between providers without the use of a separate organization governing the exchange. Ariz. Rev. Stat. § 38-3801.	Ariz. Rev. Stat. § 38-3802 requires that HIOs provide participating individuals a number of rights including the right to opt out. Ariz. Rev. Stat. § 38-3803 provides further detail on what an individual's right to opt out includes: The individual has the right to opt out by providing notice to the HIO in the form the HIO requires; an individual also has the right to opt out of a particular provider sharing his/her PHI through the HIO; and an individual has the right to opt back in by providing notice to the HIO.	--

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Arkansas (AR)	Opt-out	State Policy	Policy was created by the Arkansas Office of Health Information Technology (OHIT), which developed and maintains the state-run HIE, SHARE.	N	Applies to all individuals participating in SHARE. Participating entities (healthcare providers) are required to find a way to give individuals the right to opt out.	Arkansas Office of Health Information Technology, OHIT Privacy Policies 10 (2013) - Arkansas OHIT policy gives all individuals the right to opt out of the SHARE system (the Arkansas state-run HIE). The policy states that the decision to opt out only affects the availability of PHI through SHARE, and that participating providers' policies on sharing govern all other kinds of uses/disclosures. An individual also has the right to revoke his/her decision to opt out of SHARE. The policy allows participating entities to choose how to allow the patient to exercise his/her choice. If an individual's information is available through the SHARE system, the policy allows participating providers to assume that the individual has not opted out.	--
California (CA)	Opt-in but HIOs can get demonstration project waivers to test out opt-out models	State Policy	California State Health Information Policy Manual (SHIPM) developed by the state government entity, California Office of Health Information Integrity.	Y	All HIOs operating in CA must include consent requirements in their agreements with participating providers.	California Office of Health Information Integrity, California's Statewide Health Information Policy Manual 193 (2016) - California's statewide health information policy manual requires that an agreement between an HIO and the entities it provides HIE services for must require that participating organizations obtain the appropriate authorization from the patient to allow the exchange of health information. The policy manual defines "authorization" as "a detailed document signed and dated by the patient that grants permission for the covered entity to use or disclose health information, for specified purposes."	--
Colorado (CO)	No policy	--	--	--	--	--	--

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Connecticut (CT)	Opt-out for regular PHI; Opt-in for sensitive PHI	State Policy	Health Information Technology Exchange of Connecticut (HITE-CT) is a nonprofit quasi-state agency.	N	Applies to HITE-CT and to all persons and organizations who have access to HITE-CT managed health records.	Health Information Technology Exchange of Connecticut, Consumer Authorization and Consent Policy 3 (2011) - HITE-CT's consumer authorization and consent policy gives patients the option to opt out of having their PHI disclosed through HITE-CT. If a patient has not opted out, HITE-CT will disclose all non-sensitive PHI for the purposes of treatment, payment and health care operations as permitted by HIPAA, unless the patient and provider have agreed upon a specific restriction on disclosure. Sensitive PHI is PHI that is "subject to heightened confidentiality requirements in compliance with all federal and state laws as amended from time-to-time (HIV, substance abuse and mental health records)." Patients must specifically authorize disclosures of sensitive PHI. A patient's opt-out of HITE-CT is global, which means that no PHI will be disclosed to any party by HITE-CT, except as required by law (such as public health reporting requirements, etc.). However, even if a patient has opted out, HITE-CT may allow for disclosures of PHI in emergency treatment situations, but such disclosures will be audited strictly to make sure that there was a legitimate emergency requiring disclosure.	--
Delaware (DE)	Opt-out	Regulation	--	N	Applies to all individuals with health information in DHIN.	1-100-102 Del. Code Regs. § 7.2 (2009) - DHIN regulations on participation gives patients the right to be informed of and the option of choosing to prohibit a search for their PHI in the DHIN Interchange upon consultation with their health care provider.	Participation in DHIN by healthcare entities is voluntary.

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District of Columbia (DC)	Opt-out	State Policy	The District of Columbia Department of Health Care Finance (DHCF) was awarded a grant from the Office of the National Coordinator for Health Information Technology (ONC) to create DC HIE. DC HIE is staffed and managed by DHCF.	N	Applies to all patients and participants enrolled in DC HIE.	District of Columbia Health Information Exchange Policy Board, <i>Monthly Meeting Minutes 3 (2013)</i> - The DC HIE Policy board adopted a motion to implement an opt out consent model for the DC HIE. Further details about the policy can be found here .	--
Florida (FL)	Opt-in for each time a new provider wants to access PHI	State Policy	Florida HIE is run by the Agency of Health Care Administration, which provides guidance through the Florida Health Information Network.	Y	Applies to all providers participating in Florida HIE.	Florida Health Information Network, <i>Patient Authorization</i> - FHIN's documents discussing patient authorization of exchange of health information in FL states that patients have to authorize both the search for and access to medical records. However, Florida allows exceptions to the rule requiring patient authorization in cases of medical emergency and when disclosure is required for public health reporting purposes.	Additional details on how patient authorization works in Florida HIE are available here .
Georgia (GA)	No policy	--	--	--	--	--	--
Hawaii (HI)	No policy	--	--	--	--	--	--
Idaho (ID)	No policy	--	--	--	--	--	--

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Illinois (IL)	(1) Opt-out for mental health information	Statute	--	N	This rule is binding upon all HIEs as defined in the statute.	740 Ill. Comp. Stat. 110/9.6 - Illinois law requires that all HIEs require that participating healthcare providers give patients whose mental health information is on the HIE the opportunity to prohibit further disclosure of the record by the HIE to third parties, except in cases where such disclosure is permitted by law such as for purposes of public health reporting.	The statute defines HIE as a "health information exchange or health information organization that oversees and governs the electronic exchange of health information that (i) is established pursuant to the Illinois Health Information Exchange and Technology Act...; or (ii) has established a data sharing arrangement with the Illinois Health Information Exchange; or (iii) ... was designated by the Illinois Health Information Exchange Authority Board as a member of, or was represented on, the Authority Board's Regional Health Information Exchange Workgroup; provided that such designation shall not require the establishment of a data sharing arrangement or other participation with the Illinois Health Information Exchange or the payment of any fee."

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	(2) Opt-out for all PHI; Opt-in for special PHI	State Policy	Policy adopted by the ILHIE Authority - Instrumentality and an administrative agency of the State of Illinois.	N	Applies to all patients whose providers participate in ILHIE.	Illinois Health Information Exchange Authority, Patient Choice and Meaningful Disclosure 1 (2015). ILHIE's patient choice policy allows automatic access to PHI maintained by participating healthcare providers unless a patient opts out and prohibits access to his/her PHI through the exchange. Patients have the option of revoking their decision to opt-out. However, access to "specially protected health information" is not automatic and disclosure of such PHI requires specific consent from the individual. Specially protected health information is defined as: "certain alcohol and substance abuse treatment information; child abuse and neglect reports and records; sexual assault evidence and information; veteran's homes resident records; and any other health information that requires [individual] consent in order to be disclosed under Federal or State law."	ILHIE's opt-in policy for specially protected health information can be found here . The definition of specially protected health information can be found here .
Indiana (IN)	No policy	--	--	--	--	--	--
Iowa (IA)	Opt-out	Statute	--	N	The Iowa Department of Health is responsible for making sure that all patients participating in IHIN have the opportunity to opt out, and these requirements are not intended for other regional, population-specific or local health information networks.	Iowa Code § 135.156E (2016) - Iowa law gives patients the ability to opt out of the exchange of PHI through IHIN's record locator service. This opt-out decision is global and none of the patient's PHI will be accessible through the record locator service unless otherwise authorized by the law. A patient who has opted out has the ability to opt back into IHIN.	--

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Kansas (KS)	Opt out	Statute	--	Y	The Department of Health establishes opt-out requirements that all approved HIOs in participation agreements with covered entities have to follow. HIOs must approved to operate in the state of Kansas.	Kan. Stat. Ann. § 65-6832 - Kansas law requires the Kansas Department of Health to establish certain requirements for approved HIOs to use in their participation agreements with health care providers. These requirements include details about the written notice that a health care provider has to give to a patient explaining how and what PHI will be shared with the approved HIO. The law requires that the written notice specifically state that the patient has the right to request in writing that his/her PHI not be disclosed by the HIO and the HIO must comply with the request in all cases except in cases when disclosure is permitted for emergencies or as required by law.	--
Kentucky (KY)	No further consent	State HIE Plan	KY Strategic and Operational Plan for KHIE by the Governor's Office of Electronic Health Information (GOEHI). KHIE is administered by the Division of Kentucky Electronic Health Information in the Cabinet for Health and Family Services.	N	Applies to all participants in KHIE.	Governor's Office of Electronic Health Information, <i>First Update: Kentucky Strategic and Operational Plan for Health Information Exchange 24 (2014)</i> - GOEHI states that because health care providers are allowed to share PHI without patient consent for the purpose of treatment under HIPAA, no further consent is required for exchange of PHI through KHIE. GOEHI further states that it requires no prior consent is required for disclosures for the purposes of payment and health care operations.	--
Louisiana (LA)	No policy	--	--	--	--	--	--

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Maine (ME)	Opt-out	Statute	--	N	Applies to the state-designated statewide HIE.	Me. Rev. Stat. Ann. tit. 22, § 1711-C(18)(C) - Maine law requires that the state-designated statewide HIE provide patients the ability to opt out from participation in the HIE and to prohibit the state-designated statewide HIE from disclosing the patient's PHI to a health care provider.	--
Maryland (MD)	Opt-out	Regulation	--	Y	Applies to all HIEs, not just the state designated exchange. MD statute defines HIE as "an infrastructure that provides organizational and technical capabilities for the exchange of protected health information electronically among entities not under common ownership."	Md. Code Regs. 10.25.18.03 - Maryland regulations give patients participating in an HIE a number of rights including the right to opt out of the HIE at any time and to refuse access to the patient's PHI through an HIE, except in certain specific circumstances.	--
Massachusetts (MA)	Opt-in	Statute	--	N	Applies to any plan that receives funding from the Massachusetts eHealth Institute or the MA HIE Fund.	Mass. Gen. Laws ch. 118I §§ 11, 13 - Massachusetts law requires that any plan that has received funds from the eHealth Institute Fund or the Massachusetts Health Information Exchange Fund is required to establish a mechanism allowing patients to opt-in to the HIE and to subsequently opt-out at any time.	--
Michigan (MI)	No policy	--	--	--	--	--	--

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Minnesota (MN)	Opt-out	Statute	--	Y	All providers and entities in MN operating a record locator of patient information service have to give patients the ability to opt out. Burden is on providers to get patients' info removed from HIE service.	Minn. Stat. § 144.293(8)(d) (2015) - Minnesota law requires that health care providers or entities operating a record locator service or a patient information service must give patients the opportunity to exclude their identifying information and information about the location of their records from such a record locator or patient information service. Providers participating in a HIE with a record locator or patient information service who receive a patient's opt-out request to exclude all of his/her information from the service or to have a specific provider excluded from the service are responsible for removing that information from the service.	--
Mississippi (MS)	No policy	--	--	--	--	--	--
Missouri (MO)	No policy	--	--	--	--	--	--
Montana (MT)	No policy	--	--	--	--	--	--
Nebraska (NE)	No policy	--	--	--	--	--	--

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Nevada (NV)	Opt-in	Statute	--	Y	In Nevada, HIEs can't operate without state certification. To receive certification, HIEs have to demonstrate their adherence to patient consent standards described in the language of consent policy. Therefore, this statute requiring consent applies to all HIEs operating in Nevada.	Nev. Rev. Stat. § 439.589 - Nevada law requires that the director of the Department of Health and Human Services put forward regulations establishing standards for obtaining consent from a patient before retrieving the patient's health records from an HIE. The law further requires that these standards include requirements for how a patient may revoke his/her consent for a health care provider to retrieve his/her health records from the HIE.	--
New Hampshire (NH)	Opt-out	Statute	--	N	Applies to state-created NH-HIO only.	N.H. Rev. Stat. Ann. § 332-I:3 - New Hampshire law gives patients the right to opt out of sharing his/her name and address and his/her PHI through NH-HIO. The law requires that the patient be given this opportunity to opt out in a clear and conspicuous manner.	--

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New Jersey (NJ)	No policy	--	--	--	--	--	--
New Mexico (NM)	Opt out for demographic information and information about location of EHR, but consent is required to access the EHRs themselves	Statute¹	--	Y	Applies to all record locator services or HIEs.	N.M. Stat. § 24-14B-6 (2009) - New Mexico law requires that record locator services provide patients the option of excluding their demographic information and information about the location of their electronic medical records from the record locator service. The person at a record locator service or HIE who receives a patient's request to exclude all of his/her information from the record locator service is responsible for removing that information from the service. The law allows for access to a patient's medical record in case of a medical emergency even if the patient has opted out.	--

¹ The link provided will direct user to a general state landing page from which user may search for the statute/regulation using identified citation.

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New York (NY)	Opt-in	Regulation	--	N	Applies only to qualified entities certified by the state of New York to participate in the Statewide Health Information Network for New York (SHIN-NY).	N.Y. Comp. Codes R. & Regs. tit.10, § 300.5(a) (2016) - New York requires that qualified entities only allow access to patient information by participating healthcare providers with a written authorization from the patient or someone qualified to consent on behalf of the patient if the patient lacks capacity. The written authorization must specify who is authorized to access the information. The regulation states that qualified entities may allow access to patient information without written authorization when: (1) Prior consent has already been obtained for the disclosure and no provision of law requires any additional written authorization; (2) Disclosure is required or authorized by law; or (3) The patient is in need of emergency medical care as long as the health care provider documents the situation and states that attempting to secure consent would result in delay of treatment resulting in increased medical risk to the patient.	--
North Carolina (NC)	Opt-out	Statute	--	N	Gives all individuals with PHI in the NC HIE the right to opt out.	N.C. Gen. Stat. § 90-414.10 - North Carolina law gives each patient the right to opt out of having their PHI shared through the NC HIE and to revoke his/her decision to opt out. However, PHI must be disclosed in order to provide emergency medical services even when a patient has opted out, as long as certain criteria are met.	--

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North Dakota (ND)	Opt-out	Statute	--	N	Gives all individuals the right to opt out of participating in the state HIO.	N.D. Cent. Code § 23-12-19 - North Dakota law gives patients the right to opt out of participating in the state-run HIO by providing notice to the HIO. Further, the law gives patients the option of either fully opting out or conditionally opting out (which means that the patient's PHI will only be accessible to a health care provider in cases of medical emergency). Patient's decision to opt out can be revoked at any time and opting out does not prohibit disclosures required by law.	--
Ohio (OH)	Opt-out	Statute	--	Y	Applies to all disclosures of PHI to approved HIEs by participating healthcare providers.	Ohio Rev. Code § 3798.06 - Ohio law allows disclosure of PHI to approved HIEs by a participating health care provider as long as the provider gives the individual/personal representative of the individual written notice informing the patient, among other things, that s/he has the ability to submit a written request to place restrictions on disclosures of PHI to the approved HIO. Ohio Rev. Code § 3798-07 - Ohio law requires that providers restrict disclosures as per the patient's request. Ohio Rev. Code § 3798.16(B) - Ohio law further requires that a provider's notice of privacy practices inform patients that their PHI will be disclosed to authorized HIE and that they have the right to request that the covered entity not disclose any PHI (this must always be honored by the covered entity) or specific categories of PHI to the HIE (this must be honored by covered entity if consistent with future regulations adopted by state).	--
Oklahoma (OK)	No policy	--	--	--	--	--	--

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Oregon (OR)	No policy	--	--	--	--	--	Oregon state government seems to be working on developing a consent policy, according to the materials here .
Pennsylvania (PA)	Opt-out	Passed bill about to be incorporated into the statutory code	--	N	Applies to patients with PHI in the state HIE.	62 Pa. Cons. Stat. § 1403-C - Pennsylvania law requires that the PA Department of Human Services develop and maintain an opt-out registry and procedures to re-enroll into the HIE. The law states that only the patient has the right to decide to opt out of the HIE.	
Rhode Island (RI)	Opt-in	Statute	--	N	Applies to patients with PHI in the state-established HIE.	5 R.I. Gen. Laws § 37.7-4 - Rhode Island law gives patients and healthcare providers the choice of participating in the HIE, but providers are required to continue maintaining their own medical record. The law allows disclosure of PHI in cases where the patient has opted out when such disclosure is otherwise allowed by law.	--
South Carolina (SC)	No policy	--	--	--	--	--	--
South Dakota (SD)	Opt-out	State Policy	South Dakota Health Link is the HIE provided by the South Dakota Department of Health and guided by an active advisory council.	N	Applies to all patients whose providers participate in SD Health Link.	South Dakota Health Link, Policy and System Operation Manual 7 (2015) - South Dakota Health Link's policy states that all patients of a participating health care provider will be automatically enrolled in South Dakota Health Link, with no need for further consent from the patient. The policy states that a patient's consent will be assumed unless the patient affirmatively opts out of participating in South Dakota Health Link.	--

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Tennessee (TN)	No policy	--	--	--	--	--	--
Texas (TX)	No policy	--	--	--	--	--	--
Utah (UT)	Opt-out for Medicaid, CHIP and State public office health benefits enrollees	Bill amending a number of statutes in Utah Code	--	N	Gives all recipients of Medicaid, CHIP, and state public employee benefits automatically enrolled in the state HIE the right to opt out.	H.B. 46, 2012 Gen. Sess. (Utah 2012) - Utah passed a law that automatically enrolls Medicaid, CHIP, and public employees in the HIE unless they opt out. The bill amends a number of sections of Utah's code to include this automatic enrollment provision.	--

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Vermont (VT)	Opt-in	State agency decision adopting the policy	State agency decision adopting the policy	N	Applies to providers participating in VHIE and Vermont State Blueprint for Health HIEs.	State of Vermont Green Mountain Care Board, Decision Approving Proposed Revised Policy on Patient Consent for Provider Access to Protected Health Information on the Vermont Health Information Exchange (VHIE) or through the Vermont Blueprint for Health (2014). Vermont's Green Mountain Care Board adopted a proposed policy giving participating healthcare providers access to PHI on VHIE and Vermont State Blueprint for Health for those individuals who have a current written consent on record. The policy requires participating health care providers who collect such written consents to maintain a record of such a consent and to inform the exchanges that the patient has consented to participating in the exchanges. The policy allows participating healthcare providers access to the PHI of an individual through the exchanges without the consent in cases of medical emergency when the provider cannot obtain the individual's consent due to the emergency medical condition. The policy allows individuals who have provided consent the option of revoking the consent.	The draft proposal can be found here .; The state agency adoption of the draft proposal can be found here .
Virginia (VA)	No policy	--	--	--	--	--	--
Washington (WA)	No policy	--	--	--	--	--	--

Commonly Used Acronyms:

HIE – Health Information Exchange; HIN – Health Information Network; HIO – Health Information Organization; PHI – Protected Health Information
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West Virginia (WV)	Opt-out	Regulation	--	N	Applies to all patients whose providers participate in WV HIN.	W. Va. Code R. § 65-28-5 (2014) - West Virginia regulations require WV HIN to give patients the opportunity to make an informed choice about whether his/her PHI may be disclosed and used in WV HIN, allowing any patient to opt out of participation. The regulation considers any patient who has not opted out an automatic participant in WV HIN when his/her health care provider enrolls in WV HIN or when a data supplier discloses his/her PHI through WV HIN. The regulation further states that when a patient has opted out WV HIN will not disclose PHI in any case except for public health reporting purposes as required by law.	--
Wisconsin (WI)	No policy	--	--	--	--	--	--
Wyoming (WY)	No policy	--	--	--	--	--	--

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