



# **HIE Legislation in Arizona: One State's Efforts to Remove Barriers, Ensure Privacy and Security, and Implement Consumer Choice**

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# Arizona Health-e Connection

- Arizona Health-e Connection (AzHeC)—charged with fostering the development of health information exchanges and encouraging the adopting of health information technology in Arizona
  - Community-based forum for statewide action
  - Education and communication on HIE issues
  - Development of common HIE standards, practices and policies



# Proposed Arizona Legislation

- Goals of legislation
  - Remove barriers to HIE
  - Protect privacy and security of information in HIE
    - Requirements for health information organizations (HIOs)
    - Accountability and enforcement
  - Involve consumers in the HIE process and provide them with choice in whether to participate in HIE
- AzHeC Legal Committee developed legislative proposal over 2007-2008
  - Wide stakeholder involvement over long period of time!



# Removing Barriers to HIE

- Proposed changes to Arizona medical records statutes:
  - Remove requirements for “written” records or records “recorded in ink”-- inconsistent with electronic exchange
  - Remove redisclosure prohibitions and permit redisclosure of records to permitted individuals
  - Expressly permit providers to disclose records to HIOs
    - Clinical laboratory laws particularly problematic!



# Ensuring Privacy and Security in HIE

- Requirements for HIOs
  - Specifying types of permissible disclosures of individually identifiable health information by HIO
  - Establishing individual rights
    - To request copy of information available
    - To request amendment of incorrect information
    - To obtain written description of HIO information practices
    - To obtain list of persons who accessed information
    - To be notified of security breach
    - To consent
    - To receive notice of information practices



# Ensuring Privacy and Security in HIE

- Requirements for HIOs
  - Policies governing privacy and security of individually identifiable health information
    - Authentication and audit capabilities!
  - Subpoena provisions: not subject to subpoena unless medical record subpoena statute followed and information is not available from original source



# Ensuring Privacy and Security in HIE

- Accountability and Enforcement
  - Authority of Department of Health Services over HIOs
  - Civil penalties for violations
  - Amendment to computer tampering statute to apply to unauthorized access to HIO

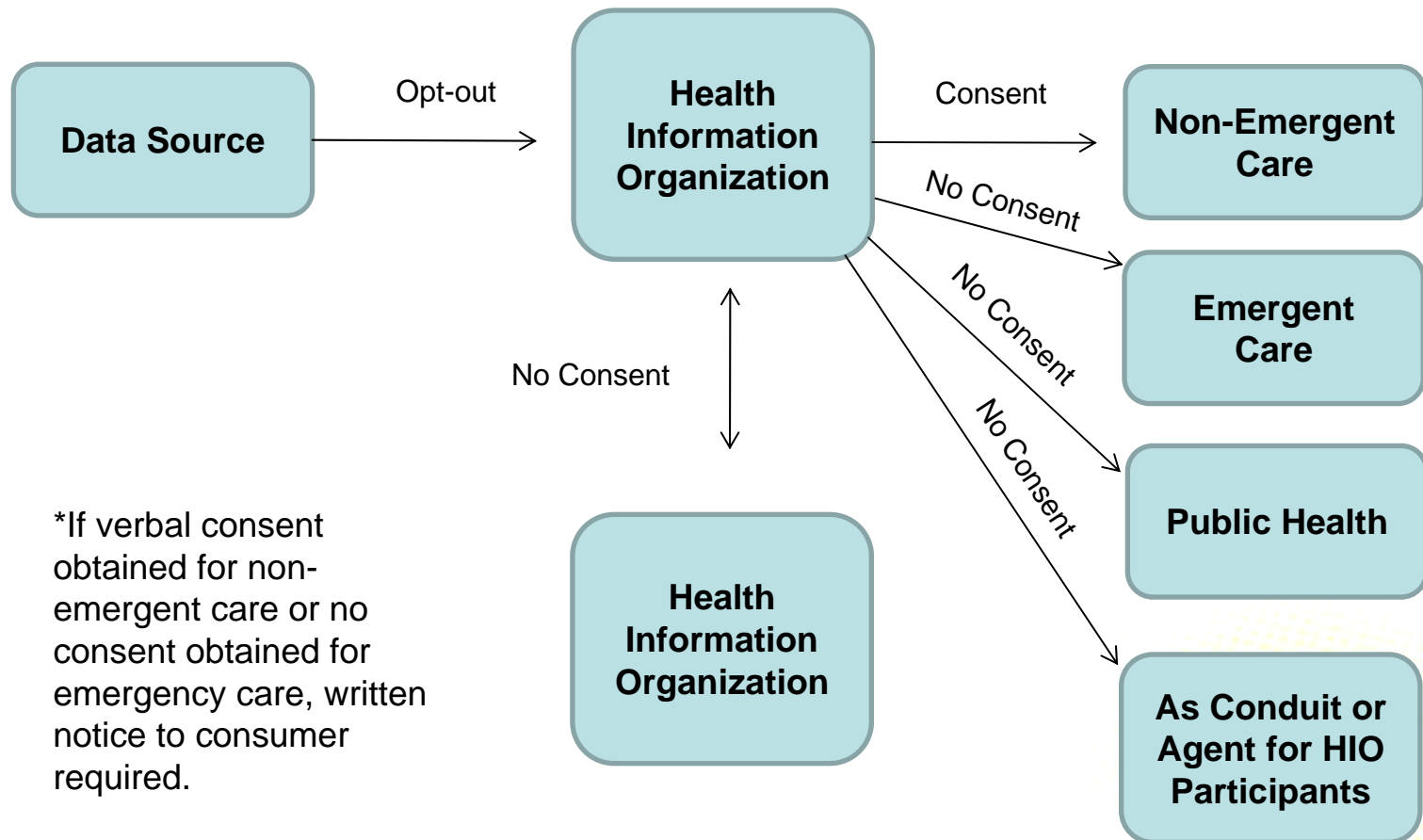


# Respecting Consumer Choice: Consent

- Approaches: none, opt-out, or opt-in
  - See White Paper on AzHeC Web site with discussion of pros and cons of different approaches at [http://www.azhec.org/BinaryData/PDFs/HII/Consumer%20Consent%20or%20Health%20Information%20Exchange%20\(final\).pdf](http://www.azhec.org/BinaryData/PDFs/HII/Consumer%20Consent%20or%20Health%20Information%20Exchange%20(final).pdf)
- Exercised at two possible levels:
  - Consent before information flows into an HIO (or is made available through the HHIO through a record locator service)
  - Consent before information flows out of an HIO to the intended recipient
- Need to balance rigorous protection of consumers, access to information for treatment, and avoidance of substantial costs and bureaucracy



# The AzHeC Legal Committee's Proposal



\*If verbal consent obtained for non-emergent care or no consent obtained for emergency care, written notice to consumer required.



# Legislation Delayed until January 2010

- Lack of complete consensus on what type of consent approach to take
- Need for more outreach to consumers and physicians
- Need for advance education of legislators about HIE



# Questions?

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*Feel free to email me for a copy of our proposed legislative package and explanatory memorandum, and collection of other states' consent and accountability/enforcement approaches!*