

Mass Hlway – Patient Consent and the Electronic Exchange of Information

MeHI eQIP Grantee Forum
December 9th, 2015

Background - Inventory of privacy protections for personal health information in Massachusetts (1 of 2)

Topic (Law/Reg.)	Fed/ MA/ Private	Description	Applicability	Type of Consent	Frequency of Consent
PHI disclosure (HIPAA)	Fed	<ul style="list-style-type: none"> Broadly protects privacy and security of PHI and ePHI Establishes rules for disclosure for purposes of treatment, payment, and operations (TPO) as well as public health reporting 	<ul style="list-style-type: none"> Defines PHI and regulates PHI exchange Self Pay disclosure to health plans 	<ul style="list-style-type: none"> No consent required for TPO Notification of Privacy Practices (NPP) required 	<ul style="list-style-type: none"> No set time limit on NPP though most are refreshed annually
Psych Notes (HIPAA)	Fed	<ul style="list-style-type: none"> Protects psychotherapy notes 	<ul style="list-style-type: none"> Only notes, not other parts of record 	<ul style="list-style-type: none"> Written consent to disclose psych notes for any reason (including TPO) 	?
Substance Abuse Treatment (CFR Title 42 Part 2)	Fed	<ul style="list-style-type: none"> Protects privacy of substance abuse treatment provided by federally funded facilities 	<ul style="list-style-type: none"> Any information in record 	<ul style="list-style-type: none"> Written consent to disclose 	<ul style="list-style-type: none"> At each disclosure At each redisclosure
HIV Testing (MA Ch. 111 Sec 70F)	MA	<ul style="list-style-type: none"> Protects privacy of HIV test results 	<ul style="list-style-type: none"> HIV test results 	<ul style="list-style-type: none"> Verbal consent to test Written consent to disclose 	<ul style="list-style-type: none"> One time to test At each disclosure

Background - Inventory of privacy protections for personal health information in Massachusetts (2 of 2)

Law/Reg.	Fed/ MA/ Private	Description	Applicability	Type of Consent	Frequency of Consent
Genetic Testing (MA Ch. 111 Sec 70G)	MA	<ul style="list-style-type: none"> Protects privacy of Genetic test results 	<ul style="list-style-type: none"> Genetic test results 	<ul style="list-style-type: none"> Written consent to test Written consent to disclose 	<ul style="list-style-type: none"> One time to test At each disclosure
MIIS (MA Ch. 111 Sec 24M and CMR 222.105)	MA	<ul style="list-style-type: none"> Protects privacy of immunization information 	<ul style="list-style-type: none"> Immunization reporting to DPH 	<ul style="list-style-type: none"> Written opt-out for sharing with other providers Opt-out form either to provider or DPH* 	<ul style="list-style-type: none"> Not defined
Age of majority (MA Ch. 231 Sec 85P)	MA	<ul style="list-style-type: none"> 18 is the age of majority in but MA does recognize mature minor rule 	<ul style="list-style-type: none"> Generally, for regular doctor visits, in non-emergency situations, a minor must obtain parental consent 	<ul style="list-style-type: none"> Informed consent may be verbal or written 	<ul style="list-style-type: none"> Once
Mass Hlway consent (Chapter 118i Sec 13)	MA	<ul style="list-style-type: none"> Provides patient choice to send information via Mass Hlway Provides patient choice to have data stored by Hlway 	<ul style="list-style-type: none"> Sending PHI via Mass Hlway Storing and sharing information in RLS 	<ul style="list-style-type: none"> Written consent Level of detail varies with type of HIE service 	<ul style="list-style-type: none"> One time with refresh at age of majority
Surescripts	Private	<ul style="list-style-type: none"> Protects access to med history information maintained by Surescripts 	<ul style="list-style-type: none"> Any provider access to med history 	<ul style="list-style-type: none"> Provider attestation of verbal consent 	<ul style="list-style-type: none"> Not defined

Opt In: Mass Law that applies to Mass Hlway ONLY. Patients must provide consent before Mass Hlway can be used in their care. Enables patient control.

Mass Hlway Policies*:

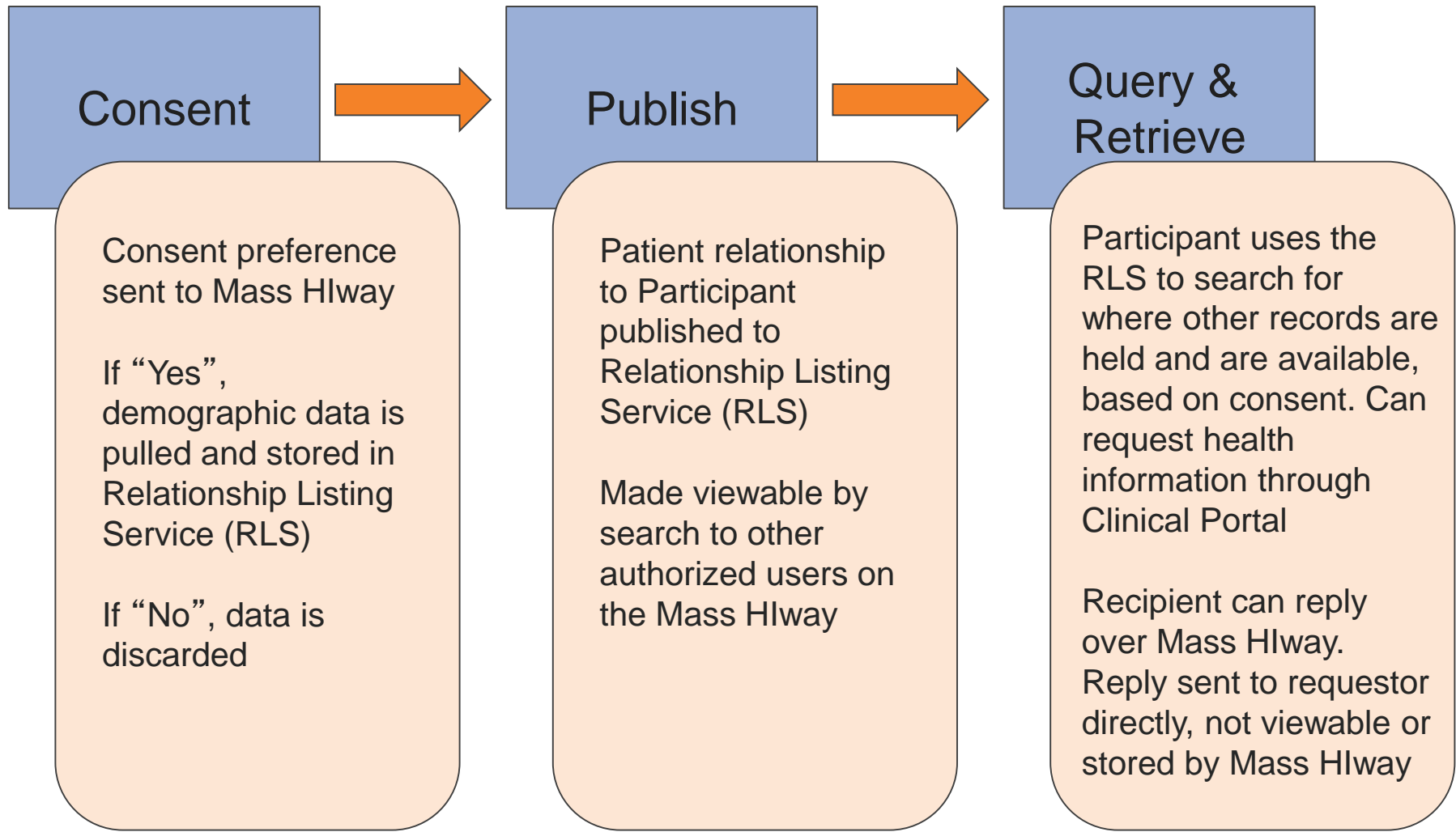
- Consent is only for use of the Mass Hlway to exchange information under HIPAA. Must follow existing laws for sending sensitive information.
- Consent for Direct Messaging must mention the Mass Hlway is being used as a mode of exchange.
- Consent for Query & Retrieve should include patient education.
 - *Participants may get consent for all services at one time.*
- Consent must be documented and reportable.
- Process must be in place for:
 - patients to change their consent and for Mass Hlway to be notified.
 - patients to request and receive an accounting of disclosures of Mass Hlway use.
- Must follow consent policies for emancipated minors and minors turning 18.

* Policies and Procedures available at www.masshiway.net

Direct Messaging is pretty easy. Information sharing happens today (as allowed by law) using methods like fax machines or the mail. Mass Hlway offers more security to do this and patients should know this.

Query and Retrieve is new and requires that:

- **The Mass Hlway Participant send demographic data (name, DOB, gender, address, email, phone, medical record number- not social security number) about the patient to the Mass Hlway (State).**
- **Demographic data is stored by the Mass Hlway (State) and made searchable by other authorized users for patient matching.** *This is to make sure the user is requesting information on the right patient.*
- **A patient's "Relationship" to that health care organization (i.e. the patient has received care there) is published and viewable by (i.e. disclosed to) other authorized healthcare organizations where patient has given consent through the Relationship Listing Service.** *This is to direct the user to where other records are available for request. Remember, the Mass Hlway doesn't store clinical information!*



Patients should know that*:

Your organization and the Mass Hlway use the best security systems and processes to protect health information, such as:

- Messages sent over the Mass Hlway are encrypted- meaning they're scrambled and readable only by the intended recipient that has the keys to unlock it, then unscramble the contents to make it readable.
- Demographic data is encrypted and stored behind a firewall in a secure location (to protect it from "hackers").
- Mass Hlway access requires user identification and strong passwords. *Be prepared to tell patients who the 'authorized users' are at your organization.*
- Logs record all requests for information by authorized users. *Be prepared to tell patients how they can get a copy. The Mass Hlway can provide these logs.*

* Educational material for patients available at www.masshiway.net

Patients may think that:

- **If I consent, anyone can pull my health records. Not true!**
 - If a patient consents for Direct messaging, the provider sends directly to another provider, no one else can see the information.
 - If a patient consents to be listed in the Relationship Listing Service, the provider still controls the actual release of information
- **The state is getting their health information. Not true!**
 - Mass HIway does not store health information AND can't see any messages sent over the network.
 - Medical records are stored by the organization, same way they are today.

Patients may think that:

- **Their information will be hacked. It's nearly impossible!**
 - Mass Hlway encryption is state of the art. A supercomputer would take a billion billion years to unlock it, so it hasn't been done before.
 - All messages are encrypted before, during and after sending. The receiver must unlock it to de-crypt it.
- **There will be a breach. That's more likely with current methods of exchange!**
 - Breaches are due to lack of encryption (like using public email), loss of unencrypted devices like a laptop, poor security.
 - *Be prepared to tell patients more about the security practices at your organization to protect their medical record. Breaches are at the source.*
 - Mass Hlway can replace unencrypted exchange methods.

Consent Workgroup update

- In late Spring the HIT Council identified consent as a barrier to Mass Hlway adoption and use and asked that the multi-stakeholder consent workgroup reconvene to formulate recommendations for the HIT Council
- The consent workgroup met 5 times over the summer to discuss consent for Direct Messaging (phase 1), the MA HIV testing law, and electronic information disclosure generally
- The following recommendations for HIT Council are a result of the discussions of the workgroup
 1. Mass Hlway Direct Messaging should not have a consent requirement that goes above and beyond HIPAA
 2. Mass Hlway should provide additional education, clarification, and guidance to providers about health information exchange generally as well key consent requirements related to the Hlway specifically
 3. Mass Hlway should provide education and guidance to patients about the Hlway including a statewide education and outreach campaign

Recommendation 1: Mass Hlway Direct Messaging should not have a consent requirement that goes above and beyond HIPAA

Discussion:

- Protection of personal health information is already covered by HIPAA and sensitive information is already covered by other federal and state laws regardless of mode of exchange (e.g., Mail, fax, direct messaging)
- Direct Messaging is functionally equivalent to faxing or emailing but much more secure. The current Mass Hlway Consent requirement on Direct Messaging has the unintended consequence of keeping providers on less secure modes of exchange (i.e., when a patient does not provide consent for the Hlway, then their provider can still send the same information via fax without explicit consent).
- Mass Hlway consent requirement for Direct Messaging is inherently confusing
 - Consumers confuse consent to send over Hlway with consent to disclose their information
 - Out-of-step with other functionally equivalent and heavily used modes such as faxing
 - At odds with all known public and private direct messaging services in the country
- Consent is a barrier to provider adoption and use of Mass Hlway Direct Messaging services

At the HIT Council meeting on Monday, December 7th, the HIT Council unanimously voted to “support the removal of consent for Direct Secure Messaging, and consideration of regulatory or legal changes that may be necessary thereto”

Recommendation 2: Mass Hlway should provide additional education, clarification, and guidance to providers about health information exchange generally as well key consent requirements related to the Hlway specifically

Discussion:

- Though Mass Hlway consent was originally cited as a major “barrier to exchange,” the Consent Advisory Group has discovered that the challenges are much broader
 - The Hlway is the first significant entrée to electronic exchange for many providers, so they have to adjust all of their consent (and other) processes
 - Hlway consent is one of many consents required in clinical practice and must be aligned with other consent processes
- Provider organizations must navigate a complex web of state and federal information disclosure laws when they modernize information exchange processes – this includes HIPAA as well as laws designed to protect sensitive information
- Navigation of PHI disclosure laws and regulation may be done more efficiently and effectively with additional clarification from the Hlway and by organizations working together, sharing legal and policy expertise, and developing best practices conventions to share with all

Recommendation 3: Mass Hlway should provide education and guidance to patients about the Hlway including a statewide education and outreach campaign

Discussion:

- Patients are generally uninformed of or confused by the many laws and regulations governing release and disclosure of their health information
- Many patients do not understand how their information is collected, stored, exchanged, and used by healthcare organizations
- Patients can be a driver of adoption if they are included and engaged in the discussion – Misunderstanding and mistrust by patients can undermine the benefits Mass Hlway is trying to bring to patients and providers
- By introducing patients to the Mass Hlway through a broad outreach campaign, patient conversations with providers about information exchange can be better informed, more targeted, and more meaningful to patients
- Patient education may be done more consistently and efficiently by the state government than by thousands of individual provider organizations



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