



<b>Consent Principles Policy</b>		<b>COO Approval Date</b>	
		<b>COO Signature</b>	
		<b>BOARD Approval Date</b>	
<b>Author</b>	Jenn Searls	<b>CEO Approval Date</b>	
<b>Owner</b>	Jenn Searls	<b>CEO Signature</b>	
<b>Owner-Title/Dept</b>	Executive Director	<b>Version #</b>	Board Second Read August 4, 2021
<b>Regulatory Compliance</b>		<b>Regulation #</b>	

**Purpose**

The mission of Health Information Alliance, Inc. (HIA) includes empowering consumers to make effective health care decisions and to promote patient-centered care. The Health Information Alliance, Inc. (HIA) Board of Directors recognizes the importance of a clear and transparent policy regarding consumer consent and the rights a consumer has to control the inclusion of their Protected Health Information (PHI) on the health information exchange as being fundamental to consumer empowerment and patient-centered care. The purpose of this Consent Principles Policy (Policy) is to set forth the principles and standards upon which HIA’s consent procedures and practices will be developed and implemented.

**Scope/Applicability**

This Policy applies to all consumer PHI and Sensitive Health Information contained within or transmitted through the health information exchange and HIA use cases.

**Definitions**

*Affirmative Consent* means explicit, written permission from a consumer that includes (i) a description of the information which the participating organization may share or receive, including specific reference to any of the following, if applicable based on state and federal law: HIV, mental health, alcohol and substance abuse, reproductive health, sexually transmitted disease, and genetic testing information; and (ii) the signature of the consumer or the consumer’s legally-authorized personal representative.

*Direct Secure Messaging* means a method of secure email communication that uses the Direct Standard, a technical standard for exchanging health information between health care entities. Direct functions like regular e-mail with additional security measures to ensure that messages are only accessible to the intended recipient<sup>1</sup>.

<sup>1</sup> The Office of the National Coordinator for Health Information Technology. “Direct Basics: Q&A for Providers.” [https://www.healthit.gov/sites/default/files/directbasicsforprovidersqa\\_05092014.pdf](https://www.healthit.gov/sites/default/files/directbasicsforprovidersqa_05092014.pdf). Accessed July 30, 2021.



*Opt-Out* means a type of consent policy where patient data is exchanged through the health information exchange automatically, but consumers are given the opportunity to opt out of having their information stored and shared through the health information exchange.

*Protected Health Information* or *PHI* has the same meaning as “protected health information” defined at 45 C.F.R. § 160.103, as amended or superseded.

*Sensitive Health Information* means any information subject to privacy protection under state or federal law, other than HIPAA, including but not limited to 42 C.F.R. Pt 2.

*Use Case* means a specific permitted purpose for exchanging patient information. A use case typically outlines the purpose for the data exchange, the type of data exchanged, and the rules for participation in the use case by participating organizations.

### **Policy Statements**

HIA is committed to ensuring that its consent procedures and practices are transparent and comply with applicable law.

Except as set forth below with respect to Sensitive Health Information, the default consumer consent policy for the health information exchange is opt-out. This means that a consumer must proactively, and explicitly, declare their desire to opt their PHI out of the health information exchange. Opting out means that a consumer’s PHI may no longer be returned as the result of a query or sent as an encounter notification. Opting out does not affect or alter the use or disclosure of a consumer’s PHI in the context of the exceptions listed in this Policy.

The default consent policy for the health information exchange with respect to Sensitive Health Information is Affirmative Consent. This means that a participating organization may not disclose consumer Sensitive Health Information to or through the health information exchange without Affirmative Consent from the consumer or the consumer’s legally-authorized personal representative.

The health information exchange shall create a consumer consent process, including but not limited to, a dedicated webpage for consumers to learn about the health information exchange, receive information about their consent options, and make a consent decision. This process shall allow consumers to opt their PHI out of the health information exchange and opt their PHI back into the health information exchange.,

A consumer’s consent preference selection shall remain in effect unless and until the consumer expressly changes the selection in accordance with HIA procedures. Consumers may opt-out or revoke Affirmative Consent at any time provided that such opt-out or revocation shall not preclude any participating organization that has received PHI via the health information exchange prior to such opt-out, and incorporated such PHI into its records, from retaining such information in its records.



### **Exceptions**

This Policy shall not apply to the following functions and activities:

- Direct secure messaging;
- Reporting of PHI by HIA for public health purposes and access to PHI by public health authorities, all in accordance with applicable legal requirements;
- Access to and use of PHI for internal HIA management and operations such as consent management and HIPAA audits; and
- Use and disclosure of PHI required by law.

### **Consent and Use Cases**

HIA shall promote transparency with respect to proposed and implemented use cases. In furtherance of such transparency, HIA shall seek ways to make use cases and related information accessible to the public, such as by posting information about use cases on HIA's public-facing website. HIA recognizes that a key principle of use case transparency is a thoughtful and accessible consent process. Accordingly, HIA shall evaluate the specific consent requirements and process for each use case.