Purpose

The purpose of this policy is to describe how the Consent decision of Patients to participate or not participate in the Upper Peninsula Health Information Exchange (UPHIE) can be meaningfully exercised. The policy will also describe how that Consent decision may be subsequently changed by Patients.

Definitions

"Authorized User" means an individual authorized to use the Services through, by, for or on behalf of a Participant User organization, including without limitation an employee of the Participant User, a member of the Participant User's medical staff and other affiliated or sponsored individuals.

"Electronic Protected Health Information" or “ePHI” shall have the meaning set forth at 45 C.F.R. § 160.103 of HIPAA.

“Opt-in” – All patients are initially considered opt-in under Michigan law. If an individual has previously opted-out and chooses to revoke their opt-out decision, all information about the individual created by a provider prior to the revocation of the opt-out will be available through UPHIE. There is no provision to allow date specific filters for sharing protected health information.

“Opt-out” - If an individual chooses to opt-out of the UPHIE, protected health information could be loaded into UPHIE, but will not be shared or visible through the UPHIE, with the exception of limited demographic information necessary to make sure that no health information is added to the system in the future. Limited information that is required to be reported by healthcare providers under the law will continue to be directly transmitted to the required recipient in accordance with mandatory reporting laws.

"Participant User" or “Participant User Organization” means a person or entity that has applied to and been authorized by UPHCN to provide and/or receive Patient Data, and has in place a then-effective, fully executed Participation and Data Sharing Agreement.
"Participation and Data Sharing Agreement" means a legally binding agreement between UPHCN and a Participant User pursuant to which UPHCN authorizes the Participant User to participate in the UPHCN HIE in accordance with, and the Participant User agrees to comply with, the Terms and Conditions and Policies and Procedures.

Policy

UPHIE will offer all Patients a meaningful way to decide whether to participate or not participate in the Health Information Exchange that it sponsors. This Patient Consent process will be governed by an Opt-Out policy. This means that all Patients of a Participant User Organization will be automatically enrolled in UPHIE, and no affirmative action needs to be taken by a Patient to establish his or her Consent. A Patient shall be deemed to have given his or her Consent to participate until and unless the Patient affirmatively Opt-Out of UPHIE.

To ensure that Patients are able to make an informed choice, each Patient will receive a written Patient Notice from his or her Participating Organization during the first Patient encounter after the Participating Organization enrolls in UPHIE. Where possible, Patients may be provided with the Patient Notice prior to the anticipated enrollment of the Participant User Organization in the Health Information Exchange.

If a Patient does not Opt-Out of UPHIE, his or her Protected Health Information will generally be disclosed in response to a specific request, or Inquiry, made by a Participant User Organization’s Authorized Users for a Permissible Purpose.

A Patient who does not want his or her Protected Health Information to be disclosed to other Authorized Users may Opt-Out by following the procedures below. If a Patient does Opt-Out, his or her Protected Health Information will not be disclosed through the UPHIE for any Permissible Purpose except Public Health Reporting.

A Patient may decide at any time to change his or her Consent to participate in UPHIE.

Procedures

A. Patient Procedures.

1. No action is needed by a Patient if he or she wishes to participate in UPHIE. A Patient shall be deemed to have given his or her Consent to participate until and unless the Patient affirmatively Opt-Out of UPHIE. These alternatives shall be collectively referred to herein as the Patient’s Consent decision.

2. The identity of each Patient receiving the Patient Notice must be verified by the Participant User Organization, including the accuracy of all Personal Demographic Information of that Patient.
3. A Patient may Opt-Out of participation in the Health Information Exchange through his or her Participant User Organization. If available on UPHIE’s website, the Patient may print and mail the Opt-Out form.

4. A Patient may Opt-Out of the Health Information Exchange during a visit or encounter with his or her Participant User Organization.

5. A Patient may choose to Opt-Out at any time, even after having already been enrolled in the Health Information Exchange. However, any exchange of Protected Health Information that may have occurred prior to a Patient’s decision to Opt-Out will not be reversed.

6. A Patient may revoke his or her decision to Opt-Out of the Health Information Exchange by completing the standard Revocation form from his or her Participant User Organization. This is a standard Revocation form developed and approved by UPHIE.

7. Once the Revocation form has been executed by the Patient and communicated to UPHIE, the patients Protected Health Information will be available to Authorized Users of the UPHIE.

8. A parent or legal guardian may express the Consent decision of a minor child under the age of 18 to Opt-Out of the Health Information Exchange through his or her Participant User Organization. If necessary, a parent or legal guardian must present the Participant User Organization with a legal guardianship paper, a child custody court order, or other legal authority to act on behalf of a child.

9. In the absence of an expression of Consent by a parent or legal guardian on behalf of a minor child under the age of 18, or in the case of a minor child affirmatively seeking to exercise his or her own Consent decision, a Licensed Practitioner at a Participant User Organization may determine after personal examination that the child is a “mature minor” capable of making a meaningful decision as to his or her participation in the Health Information Exchange. If the minor is found to be mature by a Licensed Practitioner, the decision of the mature minor to Opt-Out of the Health Information Exchange will be respected. A minor is legally presumed to be capable of making his or her own Consent decision when seeking treatment for substance abuse, birth control, prenatal care, or a sexually transmitted disease.

10. Upon reaching the age of majority, a Patient whose Consent decision was previously expressed by his or her parent or legal guardian will be given the opportunity to exercise his or her own Consent decision in accordance with the procedures outlined in the paragraphs above.

B. Participant User Organization Procedures.

1. A written Patient Notification shall be provided to the Patient either as an inclusion in or an addendum to the Participant User Organization’s Notice of Privacy Practices. The Participant User Organization is encouraged to record the delivery of the Patient Notice in the Patient’s medical record.
2. The identity of each Patient receiving the Patient Notice must be verified by the Participant User Organization, including the accuracy of all Personal Demographic Information of that Patient.

3. Once a Patient has been provided with a copy of the Patient Notice by a Participant User Organization, it is not necessary for that Participant User Organization to repeat the process.

4. If a Patient elects to Opt-Out of the Health Information Exchange, and the Patient’s identity has been verified by the Participant User Organization, the Participant User Organization will require the Patient to document his or her decision to Opt-Out by utilizing the standard Opt-Out form developed and approved by UPHIE. A paper or electronic copy of this Opt-Out form will be kept and permanently maintained by the Participant User Organization in the Patient’s medical record.

5. A Participant User Organization must allow a Patient to Opt-Out at any time, even after having already been enrolled in the Health Information Exchange. However, any exchange of Protected Health Information that may have occurred prior to a Patient’s decision to Opt-Out will not be reversed.

6. If requested, a Participant User Organization will assist the Patient in revoking his or her decision to Opt-Out of the Health Information Exchange. The Participant User Organization will supply the Patient with the standard Revocation form developed and approved by UPHIE. This form may be in either paper or electronic form. The Participating Organization must permanently retain a paper or electronic copy of the signed Revocation form in the Patient’s medical record.

7. Once the Revocation form has been executed by the Patient and communicated to UPHIE, he or she will be enrolled in the Health Information Exchange from that date forward.

8. The Participant User Organization will comply with the Consent decision made by a parent or legal guardian for his or her minor child to Opt-Out of the Health Information Exchange. If necessary, the Participating Organization will verify the authority of the parent or legal guardian to act on behalf of the child by first reviewing a legal guardianship paper, a child custody court order or other legal authority.

9. A Licensed Practitioner working at a Participating Organization, in the absence of an expression of Consent by a parent or legal guardian on behalf of a minor child under the age of 18, or in the case of a minor child affirmatively seeking to exercise his or her own Consent election, may determine after personal examination that the child is a “mature minor” capable of making a meaningful decision as to his or her Consent to participate in the Health Information Exchange. If the minor is found to be mature by a Licensed Practitioner, the decision of the mature minor to Opt-Out of the Health Information Exchange will be respected.
10. A minor is legally presumed to be capable of making his or her own Consent decision when seeking treatment for substance abuse, birth control, prenatal care, or a sexually transmitted disease.

11. Upon reaching the age of majority, a Patient whose Consent decision was previously expressed by his or her parent or legal guardian will be given the opportunity to exercise his or her own Consent decision in accordance with the procedures outlined in paragraphs 1 through 11 above.

12. All decisions made by Patients to Opt-Out of the Health Information Exchange will be immediately and electronically communicated by the Participating Organization to the UPHIE to ensure compliance with each Patient’s decision to Opt-Out. For purposes of this Policy and procedure, the term “immediately” shall mean within the same business day.

13. A Participating Organization will not deny care to any Patient solely because he or she elects to Opt-Out of the Health Information Exchange.

C. UPHIE Procedures.

1. UPHIE will provide outreach, educational information, and where requested, technical assistance to Patients and Participating Organizations to promote a consistent implementation of the Consent procedures outlined above.

2. UPHIE will include the written Patient Notice, as well as other information designed to inform Patients about the Health Information Exchange and their right to Opt-Out, on its internet website.

3. UPHIE will encourage prospective Participating Organizations, prior to their actual enrollment, to begin the distribution of the written Patient Notice at each of its Patient encounters.

4. UPHIE will develop and provide its Participating Organizations with master copies of all standard Opt-Out forms and Revocation forms. In addition, UPHIE will include all of these forms on-line on its website.

5. A Patient’s election to Opt-Out either through a Participating Organization, or if available, on-line at UPHIE’s website, will be immediately communicated to UPHIE. UPHIE will record the Patient’s decision to Opt-Out in its Master Patient Index.

6. A Patient may revoke his or her decision to Opt-Out of the Health Information Exchange at any time by completing the standard Revocation form from his or her Participant User Organization. This is a standard Revocation form developed and approved by UPHIE.

7. Once the Revocation form has been executed by the Patient and communicated to UPHIE, he or she will be enrolled in the Health Information Exchange from that date forward. Any existing Protect Health Information stored in UPHIE prior to the Opt-Out decision will be
available to the UPHIE Authorized Users. There is no provision to allow date specific filters for sharing protected health information.

8. All decisions made by Patients to Opt-Out of the Health Information Exchange will be immediately and electronically recorded by UPHIE to ensure compliance with each Patient’s decision to Opt-Out.

9. For a Patient who has not Opted-Out of the Health Information Exchange, the UPHIE will generally share all or some of a Patient’s Protected Health Information in response to an Inquiry from a Participant User Organization’s Authorized Users for a Permissible Purpose.

10. For a Patient who has Opted-Out of the Health Information Exchange, the UPHIE will ensure that no Protected Health Information will be disclosed except for the Permissible Purpose of Public Health Reporting. Instead, the Participating Organization that submitted the Inquiry will receive a message that the Patient has Opted-Out of UPHIE.

12. UPHIE may Deidentify Protected Health Information, and may use or disclose such De-identified data for any public health or research purpose approved by the UPHIE board.

13. UPHIE may make DIRECT secure messaging available to its Participant User Organizations. DIRECT secure messaging is a distinct service made available by UPHIE separate from its Health Information Exchange, and is not subject to the opt-out policies and procedures described above.

Exception to this policy may be made with the approval of the Executive Director or an authorized designee.

\# END OF POLICY & PROCEDURE \#