

	Privacy	Rio Grande Valley HIE	Policy: P1
	Effective Date 01/15/2014	Last date Revised/Updated 02/18/2016	Date Board Approved: 02/18/2016
Subject: Authorization to Use and/or Disclose Protected Health Information			

FEDERAL and STATE LAWS AND REGULATION:

45 CFR §§164.508, 164.512, 164.508 (b)(5), 164.506(a)(b)(c)
45 CFR 160.103, as amended by NPRM, July 14, 2010
Texas Health & Safety Code § 181.154(b), (c)
PIN ONC-HIE-PIN-003, Privacy and Security Framework Requirements and Guidance

POLICY:

RGV HIE’s goal is to create and maintain an environment of strong privacy and security protection that builds community and patient trust in the value of health information exchange. RGV HIE employs an Opt-Out Model, under which the health information is in the RGV HIE unless the consumer takes a signature required action to have their information excluded from the HIE.

RGV HIE’s Opt Out Model is based on a presumptive inclusion of all Protected Health Information (“PHI”), except for Sensitive PHI, in the HIE with an individual having the right to prohibit disclosure of his/her PHI by the HIE to others. Specifically, the default is for all or some pre-defined set of data (e.g., labs, summary record information) to be eligible automatically for exchange (i.e. collected), with a provision that patients must be given the opportunity to opt out of exchange (i.e. disclosure) of the data. Sensitive PHI such as HIV and mental health treatment will not be included in the HIE unless authorization as required under federal and state laws is obtained by the provider. The benefits of this Opt Out Model include, but are not limited to:

- Improving the quality and efficiency of care provided to patients by increasing a health care provider’s access to health information on a real-time basis and reducing redundancy;
- Creating a robust database of health information which can be used on a de-identified basis to develop policy and new programs or to conduct research; and
- Facilitating public health activities.

As required by Health and Safety Code §181.154, RGV HIE and Participating Providers will obtain separate authorizations from individuals or their authorized representatives before making any disclosure that does not fall within the statute's exceptions (treatment, payment, health care operations, insurance or HMO function, and as otherwise authorized or required by state or federal law). Although RGV HIE does not anticipate making any disclosures for purposes outside of this list of exceptions, for any such disclosures, RGV HIE will obtain an authorization. RGV HIE will not reidentify or attempt to reidentify an individual who is the subject of any protected health information without obtaining the individual's consent or authorization if required under the Texas Medical Records Privacy Act or other state or federal law. § 181.151, Texas Health & Safety Code. RGV HIE intends to use the Attorney General's standard authorization form for this purpose once one is adopted.

It is the responsibility of providers participating in RGV HIE to obtain the signature of patients on any authorization forms when required, as well as on Opt Out Forms. RGV HIE participating providers will establish procedures for collecting patient signatures which comply with ONC's PIN 003 Guidance to afford patients meaningful choice. Under PIN 003, a patient's meaningful choice means that choice is:

- Made with advance knowledge / time
- Not used for discriminatory purposes or as a condition for receiving medical treatment
- Made with full transparency and education
- Commensurate with circumstances for why information is exchanged
- Consistent with patient expectations
- Revocable at any time

RGV HIE will work with providers to ensure that procedures meet these requirements. Providers will at least be required to provide educational materials described in this Policy under Procedures, II. HIE Educational Materials.

At some point in the future, RGV HIE may design a segmented authorization and opt-out process which will allow patients to choose which providers can access their information and which information can be exchanged. Authorizations signed by individuals affecting the release of information in the RGV HIE database will be kept on file at the provider location.

At some point in the future after development of the database, RGV HIE may release a limited data set for research purposes under limited circumstances and in accordance with approval processes for the RGV HIE Board of Directors. *See Policy: Use and Disclosure of PHI for Research, Limited Data Set.* RGV HIE may also release data under limited circumstances for marketing and fundraising purposes. *See Policy: Use and Disclosure of PHI for Marketing and Policy: Use and Disclosure of PHI for Fundraising.*

In addition to treatment, payment and healthcare operations, RGV HIE will allow disclosures for the following as allowed or as required by HIPAA and applicable state laws:

Public Health Activities	Health Oversight Activities
Judicial and Administrative Proceedings	Law Enforcement
Decedents	Cadaveric Organ, Eye or Tissue Donation
Specialized Government Functions	Workers' Compensation
To avert a serious threat to health or safety	

For information regarding who the proper person is to sign authorizations for the release of sensitive data about incapacitated individuals, minors and deceased individuals, *See Policy: Personal Representative and Deceased Individuals*

PROCEDURE:

I. AUTOMATIC INCLUSION

- A. Selected Data about a Patient that is contained in a connected Electronic Medical Record maintained by a RGV HIE Participating Provider, or its Authorized Users, shall be automatically contributed to the RGV HIE Clinical Data Repository and exchanged through the HIE, unless the patient exercises his or her choice to “opt-out” of RGV HIE and unless the patient chooses not to share sensitive data. For list of “selected data” elements see attached CCD format.
- B. Including Patient Data in the RGV HIE database or exchanging Patient Data through the HIE does **not** automatically permit access to such Data by Participating Providers and Authorized Users.
- C. Patient Data maintained or exchanged through RGV HIE shall not be available for Access by any Participating Provider or Authorized User unless such Access is authorized, is a permissible use, and procedures are followed for granting access to authorized users, as set forth in these RGV HIE Policies and the Business Associate Agreement, Master Services Agreement and Core Service Agreements, as applicable, between the Participating Provider and RGV HIE.

II. HIE EDUCATIONAL MATERIALS

- A. Participating Providers are responsible for providing Patients with educational information regarding RGV HIE. Participating Providers shall be required to utilize the RGV HIE Brochure, or a substantially similar educational brochure approved by RGV HIE, for dissemination to Patients (“HIE Educational Brochure”).
- B. Participating Providers shall be responsible for their own internal tracking of which of their Patients have or have not received an Educational Brochure.
- C. To facilitate Patients’ understanding regarding where their Data is being generated,

stored and being made accessible for exchange, a list of Health Care Providers participating in RGV HIE shall be made available through RGV HIE's website, a link to which may also be placed on each Participating Provider's website. Each Participating Provider shall also be responsible for providing a hard copy of such list if requested by a Patient.

- D. In addition to providing educational materials, Participating Providers must Inform patients about Provider's data exchange with RGV HIE and be responsible for either obtaining any signed patient authorization form required under state and federal privacy and security laws and regulations OR filtering out sensitive patient data from any data sets transmitted to RGV HIE. Providers may inform patients of participation in RGV HIE by updating their existing Notice of Privacy Practices or providing such notification in a separate document. Providers must also obtain the Patient's signature on an Acknowledgement Form which contains language substantially similar to the attached Acknowledgement of Notice of Privacy Practices.
- E. Participating Providers must also Inform patients of their right to opt out of participation in data sharing through RGV HIE and be responsible for obtaining a signed Opt-Out Form and filtering out the patients' data from data feeds to RGV HIE in instances where the patient chooses to opt out of data sharing through RGV HIE. To inform patients, Providers may update their existing Notice of Privacy Practices or provide such information separately, as explained on the attached Acknowledgement of Notice of Privacy Practices.

III. "OPT-OUT" CHOICE

- A. All Patients who are treated by a Health Care Provider that is a Participant of RGV HIE shall have the option and opportunity to choose to not have information about them accessed or made available through RGV HIE.
- B. Patients may exercise their right to be excluded from RGV HIE by completing a "HIE Opt-Out" process as set forth below in Section E, or as may be reasonably determined and implemented from time to time by RGV HIE.
- C. Until the RGV HIE develops a segmented opt-out process and/or the functionality to mask selected data elements, the "Opt-Out" choice shall result in a **complete** Opt-Out of Patient Data being shared through the RGV HIE.
- D. *Effect of Opt-Out.*
 - 1. After a Patient exercises his/her Opt-Out choice, such Patient's Data (including the Patient's name) shall no longer be accessible to Health Care Providers through RGV HIE. Providers are responsible for filtering out the patients' data from data feeds to RGV HIE in instances where the patient chooses to opt out of data sharing through RGV HIE.

2. Procedures and mechanisms shall be implemented in order to ensure that there is no further access of a Patient's information through RGV HIE if such Patient has signed an Opt-Out Form. Such procedures shall include at least the following:
 - a. A Patient seeking to Opt-Out may sign the standard RGV HIE "Opt-out" Form, which shall be made available through Participating Provider's Registrar or similar department. The Registrar or similar department must make available copies of the "Opt-Out"/Revocation Forms to Patients at their request and at Participating Provider's own cost.
 - b. Each Participating Provider must accept a signed "Opt-out" Form handed in-person to its Registrar or other similar Department by a Patient in order to facilitate a Patient opting-out of the RGV HIE. The Provider may choose to accept Forms by mail or electronically through their Patient Portal or other means. The Registrar shall be responsible for reasonably authenticating the identity of each individual seeking to opt-out of the RGV HIE and confirm the date on the form as the date the individual has handed the form in. The Registrar shall follow the Provider's internal procedures for flagging the patient as Opt Out so that data regarding the patient is not shared through the RGV HIE. Each Participating Provider is responsible for maintaining signed "Opt-Out Forms".

E. Revocation of Prior Out-Out

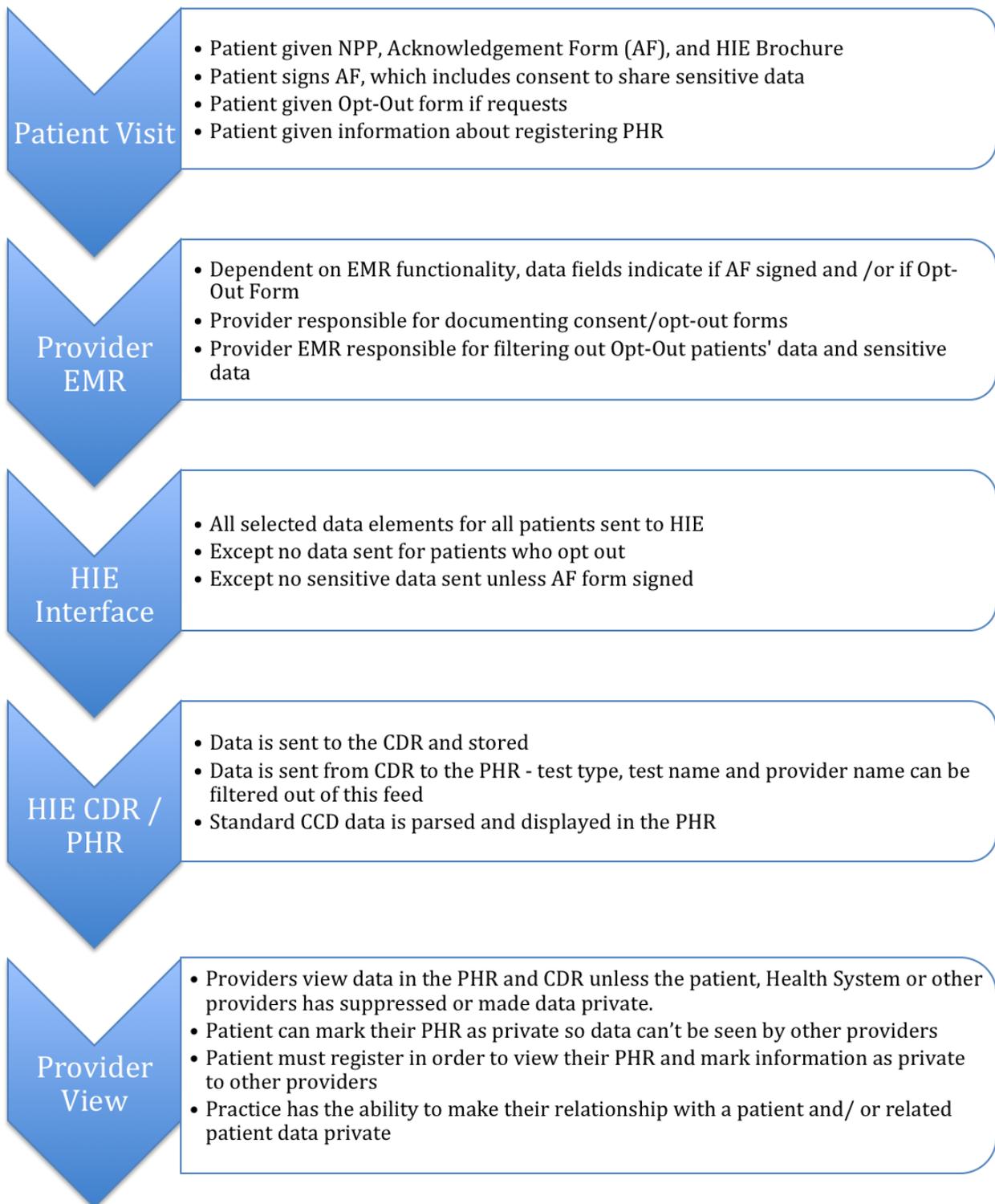
1. A Patient who has chosen not to make his or her information available through RGV HIE subsequently may be reactivated only if the individual revokes his or her prior decision to Opt-Out.
2. The Provider shall be responsible for providing patients with Revocation Forms and accepting signed Forms from patients. The Provider shall follow the Provider's internal procedures for revoking any flags that identify the patient as Opt Out so that data regarding the patient can be shared through the RGV HIE.

IV. AUTHORIZATION FOR SHARING SENSITIVE DATA

- A. Each Participating Provider shall remain responsible for knowing and determining whether, and if, additional Patient authorization must be obtained prior to allowing access to Patient's Data through RGV HIE. For example, if a law or regulation requires a Health Care Provider (e.g., a psychologist) to not permit disclosure of Data without *prior written consent*, then such Health Care Provider is solely responsible for obtaining such prior written consent or not sharing data through RGV HIE in a manner that would cause a violation of such standard or law.

- B. The provider who transfers the data to the HIE is responsible for identifying data that is subject to heightened confidentiality under federal and state laws (HIV, alcohol and drug abuse, mental health, etc.)("Sensitive Data"). Providers have this obligation currently. The HIE will not determine which health information is Sensitive Data. The HIE will adopt the provider's identification of Sensitive Data. Until the RGV HIE develops a segmented authorization process and/or the functionality to mask selected data elements, Providers are responsible for filtering out of data feeds all sensitive data for which the patient has not signed an authorization for disclosure in circumstances where an authorization is required. RGV HIE currently has the capability to filter data with configuration done by RelayHealth based upon a list of confidential results tests code identified by the Provider. See attached document, RelayHealth Features.
- C. Disclosure of Sensitive PHI (for HIV, alcohol and drug abuse, mental health, etc.) will be determined according to existing federal and State laws governing such disclosure. At a minimum, Providers must obtain the Patient's signature on an Acknowledgement Form which contains language substantially similar to the attached Acknowledgement of Notice of Privacy Practices. Alternatively, Providers may obtain signed authorization using their standard Authorization Form and Providers are responsible for determining that their approach is in compliance with legal requirements.
- D. Participants and Authorized Users shall not withhold coverage or care from a Patient on the basis of that Patient's choice not to have information about him or her shared through RGV HIE.

Summary of Authorization and Opt-Out Processes



Acknowledgement of Notice of Privacy Practices

[Provider] participates in RioGrande Valley Health Information Exchange (RGV HIE) which is a nonprofit, community health information exchange that facilitates electronic exchange of patient information with physicians, hospitals, labs, pharmacies and other providers.

Sharing patient information with other providers through RGV HIE helps [Provider] provide better care for patients by not duplicating tests and having more complete information about patient's medication and other treatment history. In the future, RGV HIE will also connect to other HIEs to allow information to be available to other providers when patients travel outside of our region. See RGV HIE's brochure for more information about how RGV HIE helps us promote patient health and protects patient information. Patients can also read more about RGV HIE at www.rgvhie.org.

Because treatment information sometimes includes sensitive health information about HIV/AIDS, behavioral health treatment, substance abuse or other issues, we need your consent in order to add your treatment information to the network. Please indicate whether you consent to having your sensitive information included in the network.

YES, I consent to sharing my sensitive health information through RGV HIE. ____ Patient Initials

Patients may choose not to have any of their information shared through RGV HIE by signing an Opt-Out Form. You may request an Opt Out form from [Provider] staff. [Provider] will not discriminate against you if you choose to sign an Opt Out form and [Provider] does not require you to share information through RGV HIE in order to receive medical treatment.

I understand that [Provider] shares patient information through RGV HIE and that I may choose not to have my patient information shared through RGV HIE by signing an Opt Out Form. ____ Patient Initials

Signed: _____ Date: _____

[Contact information lines]

Acknowledgement of Notice of Privacy Practices Instructions for Providers Office

Under state law, Providers must notify patients of participation in a health information exchange and you may use the Notice of Privacy Practices to do this. State law also requires Providers to obtain consent from patients before sharing some types of sensitive information in some circumstances, for example HIV/AIDs, behavioral health treatment, and substance abuse. Also, federal guidance requests that Providers give patients a “meaningful choice” on whether they want to participate.

The attached document provides sample language that you can use as follows:

- You may use the language as a separate form attached to your existing Notice of Privacy Practices or you may incorporate into your existing Notice of Privacy Practices or into your existing acknowledgement form.
- You may change the language to better describe how sharing information helps you help the patient. This language is only an example, feel free to use your own words: *“Sharing patient information with other providers through RGV HIE helps [Provider] provide better care for patients by not duplicating tests and having more complete information about patient’s medication and other treatment history”*
- Patients may choose to “opt out” of participation, which means they may choose not to share their information through the health information exchange. You may choose to give the patient the “opt out” form if they ask for it, or you may choose to refer them to RGV HIE to obtain the form.
- You may change language on the form, but you must be sure to include a check box or signature line where the patient checks off on a statement that says they agree to sharing their sensitive information.

For more information, including background information on federal and state privacy laws, or for questions, contact RGV HIE.



RIO GRANDE VALLEY HEALTH INFORMATION EXCHANGE OPT-OUT REQUEST FORM

I understand that participation in RGV HIE is voluntary and that if I do not want to participate I can choose to “opt out” of including my health information in the RGV HIE system by signing this form.

CHOICE: INFORMATION NOT SHARED; CAN'T BE VIEWED IN AN EMERGENCY

I understand that by submitting this *HIE Opt-Out Request Form* my health information **WILL NOT** be included in the RGV HIE database and not be viewable by other health care providers.

I understand that by submitting this HIE OPT-OUT Request Form my health information **WILL NOT be available for health care providers to view in an emergency.**

I understand that I am free to revoke this Opt-Out Form at any time and can do so by completing a *RGV HIE Revocation of Opt-Out Form* that can be obtained from RGV HIE’s website at www.rgvhie.org or from my health care provider.

I understand this request only applies to sharing my health information through the RGV HIE system. I recognize that when I see a health care provider for treatment that provider may request and receive my medical information from other providers using other methods permitted, like fax or mail.

Patient Name (First, Middle, Last)	
Previous Names	Date of Birth (mm/dd/yyyy)
Mailing Address	City, State, Zip Code
Contact Phone Number	Email Address

Signature of Patient **Date Signed**

If under 18 years, signature of parent or guardian

Parent Guardian Other _____

Signature of Parent / Guardian **Date Signed**

Parent / Guardian Name **Parent/Guardian Contact Telephone**