

APPENDIX B¹

TABLE 2

State	Selected State Laws
DE	<p>DEL. CODE ANN. tit. 16, §§ 9920-22 (2010): Creates the Delaware Health Information Network (DHIN) to “promote the design, implementation, operation, and maintenance of facilities for public and private use of health care information in the State”; assigns powers and duties to DHIN.</p> <p>DEL. CODE ANN. tit. 16, § 9926 (2010): Mandates that the Delaware Health Care Commission shall, by rule or regulation, ensure that patient specific health information be disclosed only to those having a need to know in accordance with the patient’s consent or best interest. Any misuse of DHIN health information or data shall be reported to the Office of the Attorney General, and is subject to prosecution and penalties under the Delaware Criminal Code or federal law.</p> <p>DEL. CODE ANN. tit. 16, § 1203 (2010):</p> <p>1-100-102 DEL. CODE REGS. §§ 1.0-8.0 (2009): Provides the requirements of participation in DHIN; specifies the obligations of business associates under HIPAA; and specifies that patients shall be informed of and may choose to preclude a search of their individual health information (opt-out) in the DHIN Interchange after consultation with their health care provider.</p>
IN	<p>IND CODE ANN. §§ 5-31-3-1, 5-31-6-3 (West 2009): Establishes the Indiana Health Informatics Corp. to assist in the development of a statewide HIE system. Specifies that an HIE system must comply with HIPAA.</p>
MA	<p>MASS. GEN. LAWS ANN. ch. 40J §§ 6D-G (West 2009): Establishes the E-Health Institute Fund for the purpose of advancing the use of HIT in the Commonwealth. Grantees receiving money from the Fund must:</p> <ul style="list-style-type: none"> • allow patients to opt-in to the health information network and opt-out at any time • securely maintain identifiable health information • provide individuals the option to receive a list of individuals who have accessed their identifiable health information • develop guidelines addressing the privacy and confidentiality of identifiable health

¹ For a comprehensive review of state law requirements for patient permission to disclose health information, see Pritts, J., et al., Privacy and Security Solutions for Interoperable Health Information Exchange: Report on State Law Requirements for Patient Permission to Disclose Health Information, August 2009. Available at: http://www.healthit.hhs.gov/portal/server.pt/gateway/PTARGS_0_10741_910326_0_0_18/DisclosureReport.pdf. See also Purington, K., et al., “Electronic Release of Clinical Laboratory Results: A Review of State and Federal Policy.” Prepared for: *California HealthCare Foundation*, January, 2010. Available at: <http://www.chcf.org/topics/view.cfm?itemid=134157>.

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	<p>information</p> <ul style="list-style-type: none"> • report any unauthorized access or disclosure of patient health information <p>MASS. GEN. LAWS ANN. ch. 112 § 2 (West 2009): Effective January 1, 2015 the board of registration for medicine, which licenses physicians, will require that all applicants be competent in the use of computerized physician order entry, e-prescribing, EHRs and other forms of HIT.</p>
MD	<p>MD. CODE ANN., HEALTH-GEN. § 19-143 (West 2009): Required the Maryland Health Care Commission to designate a state HIE on or before Oct. 1, 2009. On or before September 1, 2011, the Commission must adopt regulations that require State-regulated payors to provide incentives to health care providers to promote the adoption and meaningful use of EHRs. On or after the later of January 1, 2015 or the date established for penalties under ARRA, health care providers must use EHRs that are certified by a national certification organization designated by the Commission and capable of connecting to and exchanging data with the HIE designated by the Commission in order to qualify for incentive payments.</p>
NV	<p>NEV. REV. STAT. § 439.538 (2007): Allows individuals to opt out of the electronic transmission of individually identifiable health information, except when required by HIPAA or state law. Medicaid and CHIP recipients may not opt out. Exempts HIPAA-covered entities that electronically transmit individually identifiable health information in compliance with HIPAA provisions from compliance with more stringent privacy or confidentiality provisions under state law.</p>
NY	<p>N.Y. PUB. HEALTH LAW § 18 (McKinney 2010): Requires that hospitals, physicians, other health care providers, and HMOs obtain written consumer consent before disclosing personal health information for non-emergency treatment. Requires patient consent even in the case of treatment, payment, and health care operations.</p> <p><i>New York courts analyzing Public Health Law, § 18 have required “any individual, including government officials, who possess medical records to keep those records confidential and not to release them to third parties without proper authorizations.”</i> <i>Grosso v. Town of Clarkstown, No. 94 Civ. 7722(JGK), 1998 WL 566814, at *8 (S.D.N.Y. Sept. 3, 1998); Caraveo v. Nielson Media Research, Inc., et al., No. 01 Civ. 9609 LBSRLE, 2003 WL 169767 (S.D.N.Y. Jan. 22, 2003).</i></p> <p>N.Y. EDUC. LAW § 6530(23) (McKinney 2010): It is professional misconduct for physicians, physician’s assistants, and specialist’s assistants to reveal personally identifiable information obtained in a professional capacity to a third party without the consent of a patient.</p> <p>N.Y. COMP. CODES R. & REGS. tit. 8, § 29.1 (2009): Prohibits licensed professionals from revealing “personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the patient or client, except as</p>

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	<p>authorized by law.”</p> <p><u>Disclosure of HIV- related information:</u></p> <p>N.Y. PUB. HEALTH LAW § 2782 (McKinney 2010): Provides that confidential HIV-related information shall not be disclosed (with exceptions for disclosures to a health care provider or health facility when necessary to provide appropriate care or treatment to the individual, a child of the individual, a contact of the individual, or a person authorized to consent to health care for such contact).</p> <p>N.Y. COMP. CODES R. & REGS. tit. 10, § 63.5(a) (2009): Provides that no confidential HIV-related information shall be disclosed under a “general release,” but disclosure is permitted under a “specific release” that has been approved by DOH</p> <p><u>Disclosure of Mental Health Information:</u></p> <p>N.Y. MENTAL HYG. LAW § 33.13(d)–(f) (McKinney 2010): Permits disclosure of PHI among mental hygiene law-licensed providers for treatment purposes without obtaining patient consent, but disclosure is limited to that information necessary in light of the reason for disclosure.</p> <p><u>Additional State Laws</u></p> <p>N.Y. SOC. SERV. LAW § 364–j-2 (McKinney 2010): Allows for providers who meet certain standards set by DOH to receive supplemental payments for the increased cost of the use of EHRs.</p> <p>N.Y. SOC. SERV. LAW § 367–a (McKinney 2010): Allows the Office of Health Information Technology Transformation to establish an EHR and electronic prescribing program to award incentives to physicians and pharmacies who implement such programs.</p>
RI	<p>Rhode Island Health Information Exchange Act of 2008, R.I. GEN. LAWS §§ 5-37.7-1 through 5-37.7-15 (2009): Establishes a statewide HIE under state authority and specifies that the HIE will be opt-in, that is, patients and providers have the choice to participate in the HIE (7-4). The act also specifies that authorization is not required for release of information to public health authorities for a specified function, to health care providers for diagnosis or treatment in an emergency, and to the RHIO for operation and administrative oversight of the HIE (7-7). Additionally patients have the right to terminate participation and will be able to obtain disclosure reports as well as notices of security breaches (7-10).</p> <p>Rules and Regulations Pertaining to the Regional Health Information Organization and Health Information Exchange (effective Aug. 11, 2009) (not codified): Promulgated pursuant to the authority conferred under R.I. Gen. Law § 5-37.7. Establishes safeguards and confidentiality protections for Rhode Island’s HIE in order to</p>

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	<p>improve the quality, safety, and value of health care, keep confidential health information secure, and use the HIE to progress toward meeting public health goals. Provides that confidential health information should only be accessed, released, or transferred from the HIE in accordance with R.I. Gen. Law § 5-37.7, these Regulations, and any other applicable state or federal law or regulation.</p>
WA	<p>WASH. REV. CODE ANN. § 41.05.031 (West 2009): Directs specific state agencies to cooperate with the Washington State Health Care Authority in the establishment of health care information systems.</p> <p>WASH. REV. CODE ANN. § 41.05.035 (West 2009): Establishes pilot of a consumer-centric health information infrastructure and health record banks that will facilitate the secure exchange of health information.</p>
WI	<p>WIS. STAT. ANN. § 146.82 (West 2009): Allows for the sharing of data with any health care provider involved in the patient’s care without the informed consent of the patient. Allows a provider to release a portion of a patient health care record to:</p> <ul style="list-style-type: none"> - Any person, if the patient or a person authorized by the patient agrees to the release - Any of the following, if the patient and person authorized by the patient are incapacitated or not physically available, if an emergency makes it impracticable to obtain patient consent, and if the health care provider determines the release is in the patient’s best interest: <ul style="list-style-type: none"> ▪ to a member of the patient’s immediate family, a relative, close personal friend, or an individual identified by the patient; that portion of the record that is directly relevant to the involvement of that person in the patient’s care ▪ to any person, that portion of the record that is necessary to identify, locate, or notify a member of the patient’s immediate family or another person who is responsible for the care of the patient concerning the patient’s location, general condition, or death. <p>Exec. Order No. 303, Relating to the Governor’s WIRED for Health Board (Dec. 1, 2009): Creates the Wisconsin Relay of Electronic Data for Health Board (WIRED) to lay the groundwork for a statewide health data exchange. The Board must offer recommendations for technical infrastructure, oversight, accountability, long-term funding and common rules to protect patients by June 2010. The Board’s activities will be funded by a \$9.4 mil grant from the federal economic stimulus package.</p>