

Managing Patient Authorization in Regional Health Information Organizations

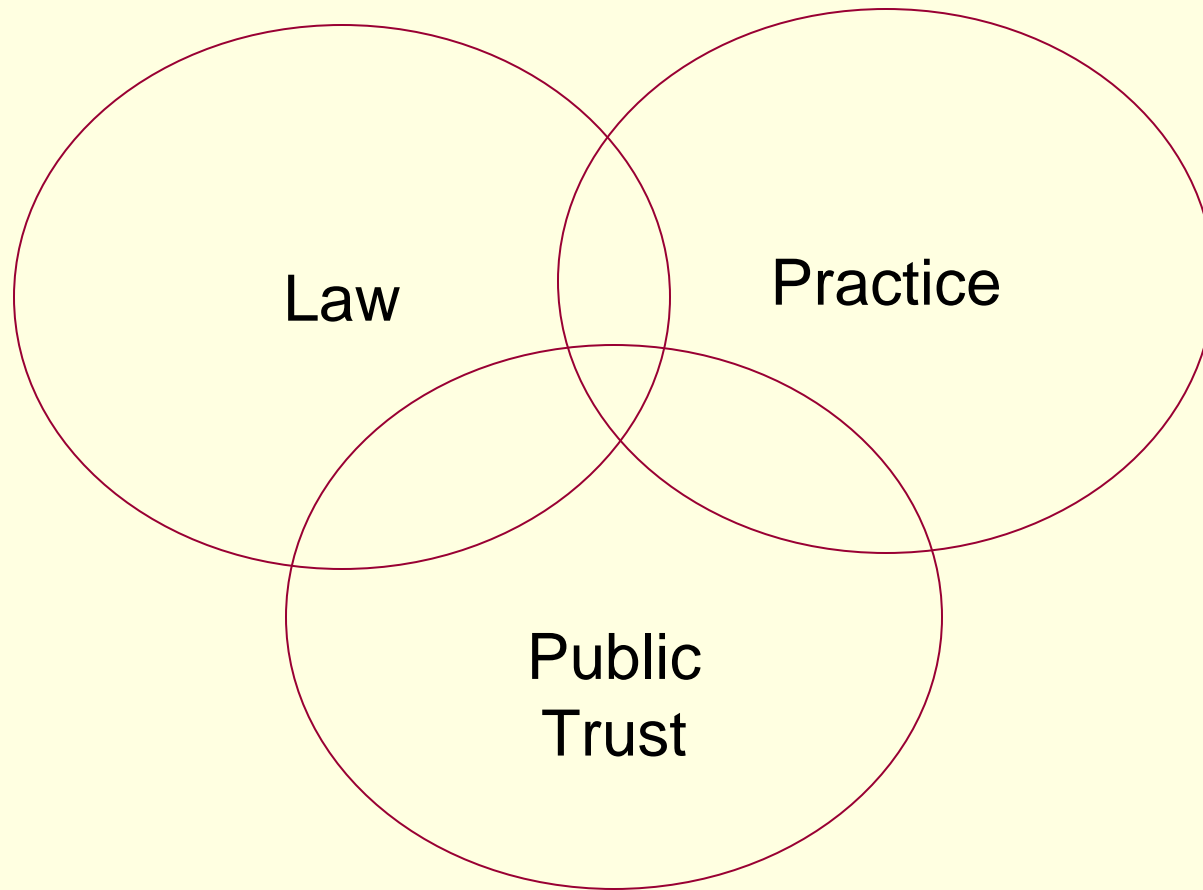
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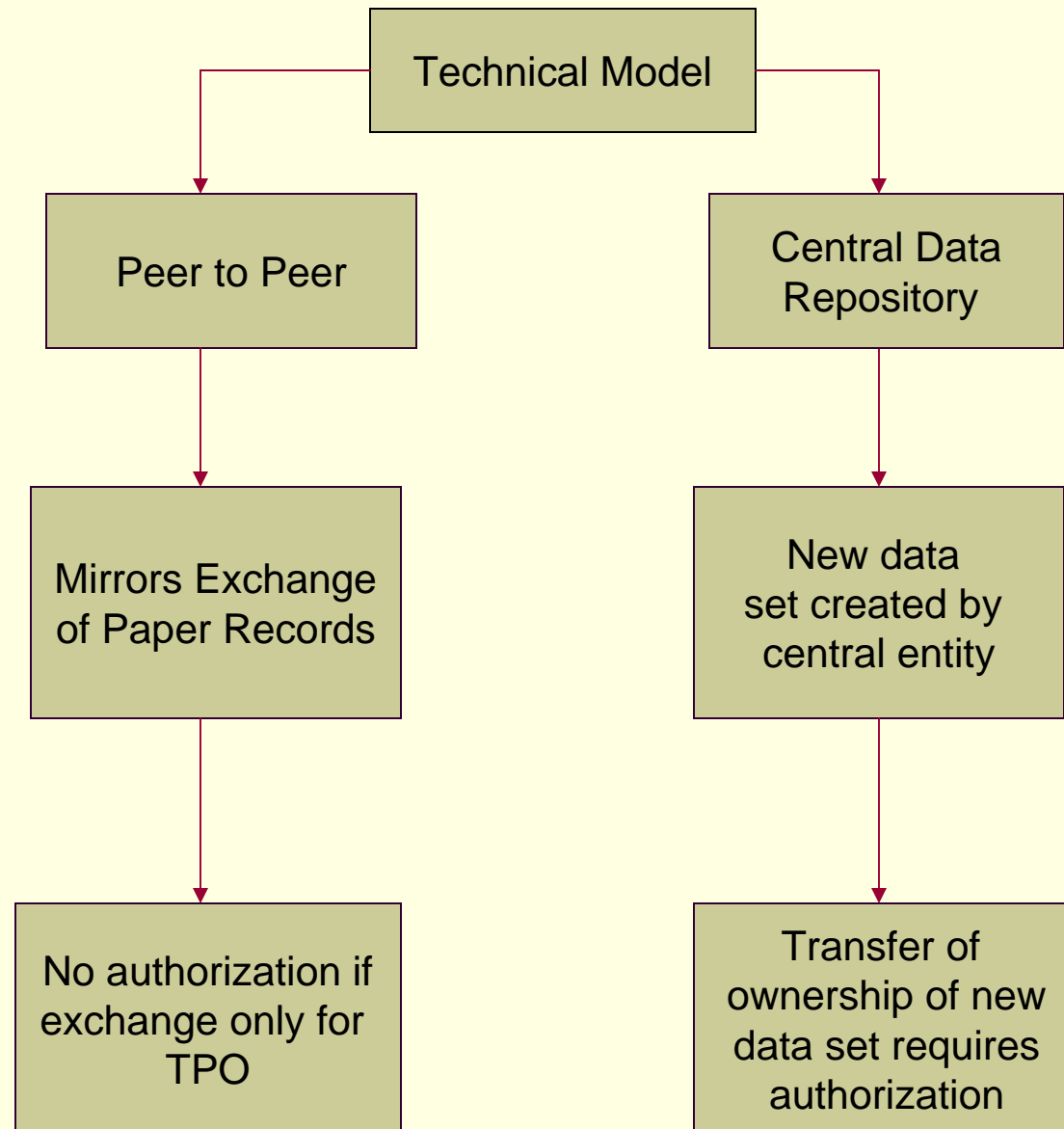
Key Factors Driving Privacy Practices



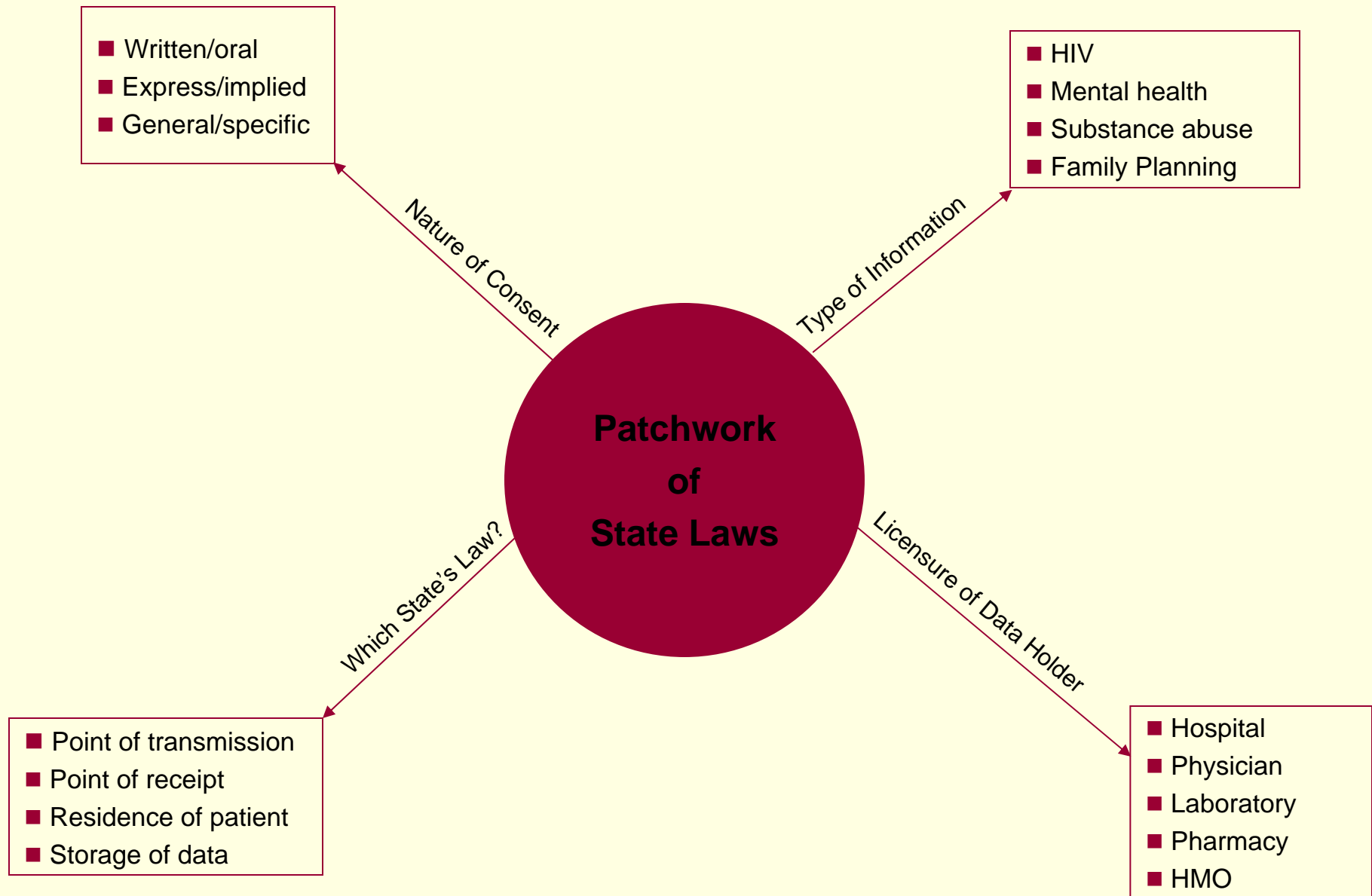
Preliminary Observations

- HIPAA is a road map, not an impediment, to data exchange
- State privacy laws pose the greatest challenge to data exchange projects
- A project's technical model affects the privacy analysis
- A project's business plan affects the privacy analysis
 - role of payors
 - use of clinical decision support
 - participation of researchers or public health authorities

Patient Authorization Under HIPAA



Patient Authorization Under State Law



Opt In vs. Opt Out Consent

ISSUE	OPT OUT	OPT IN
Regulatory Uncertainty	-	+
Risk of Patient Claims	-	+
Public Trust	-	+
Ease of Implementation	+	-
Patient Participation Rate	+	-

Scope of Consent Options


- Disclosures by provider obtaining consent
- Disclosures by all providers participating in RHIO
- Disclosures by specified providers

Options for Managing Sensitive Health Information

- Specialized consent for certain facilities or providers
- Specialized consent for certain patients
- Data filtering

Role of RHIO in Consent Management

Level of
Centralized
Control



- Mandated standard consent form with central auditing
- Mandated consent form without auditing
- Model consent form for voluntary adoption
- General representation of “compliance” by providers
- No reference to consent in user agreements

Emerging State Laws Directly Regulating Health Data Management Companies

- California
- Texas
- Other states?

Other Consent Management Issues

- Revocation of consent
- Restrictions on uses
- Authority of parents to sign on behalf of minor children

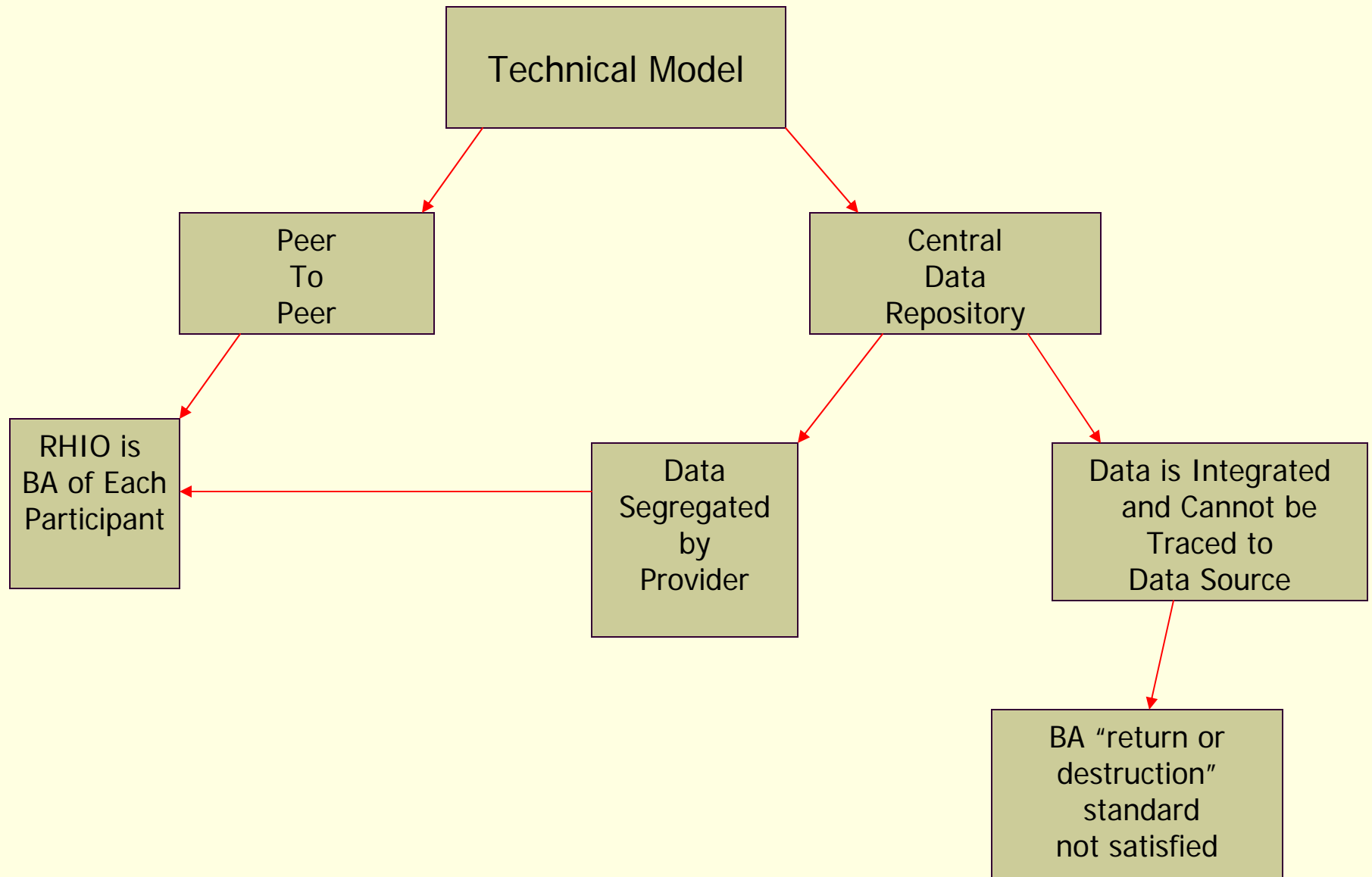
Minimum Necessary Rule

- Disclosures for treatment purposes not subject to minimum necessary rule
- Disclosures for payment or health care operations (e.g., quality improvement) must meet minimum necessary standard
- Providers may rely on request by another covered entity for minimum necessary compliance purposes
- Participation of payors tends to heighten minimum necessary concerns
- False patient matches may raise minimum necessary issues

Verification of Patient Relationships

- RHIO participants must demonstrate treatment or coverage relationship with patient whose data they seek to access
- Which patient identifiers will participants be required to provide for verification purposes?
- Can patient relationships be “registered” up front to avoid case-by-case verification?
- Role of “break the glass” access?

Business Associate Requirements



Other Business Associate Issues

- Data aggregation
- Data de-identification
- “Public interest” disclosures – e.g., research, public health
- Role of BA in responding to patient requests
- Indemnification

Potential Privacy-Related Claims

- HIPAA civil and criminal penalties
- Enforcement by state health departments under state privacy laws
- FTC or state attorney general claims based on “consumer fraud” theories
- Common law claims by patients or patient classes (e.g., breach of fiduciary duty, negligence)