

<b>TITLE: Appropriate Use and Disclosure</b>	
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Approved By: Hawai'i HIE Board of Directors	

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## 1. Purpose

This policy provides requirements to ensure that protected health information (PHI) and other data residing in and used via the Hawai'i HIE's Health eNet system ("Health eNet", the "System") are appropriately protected; and are requested, accessed, used and disclosed via the System in manners consistent with Hawai'i HIE policies and procedures, and all applicable laws.

## 2. Scope

This policy applies to: 1) the Hawai'i HIE and all of its workforce members, 2) all Health eNet Authorized Users, 3) all Hawai'i HIE business associates, subcontractors, and 4) all Hawai'i HIE Participants.

## 3. Definitions

**Data Sharing Agreement (DSA) / Participant Agreement (PA).** The documented agreement made by and between Hawai'i HIE and each Participating Entity, which sets forth the terms and conditions covering the operation of Hawai'i HIE and the rights and responsibilities of the Participants and Hawai'i HIE. DSAs must be used if a Participant will contribute data to the Health eNet Community Health Record (CHR).

**Operational Policies and Procedures.** Policies and procedures developed by the Hawai'i HIE to govern: 1) participation with the Hawai'i HIE, and 2) the operation and utilization of the Hawai'i HIE's Health eNet System. The Operational Policies and Procedures are published by Hawai'i HIE on its website (<http://www.hawaiihie.org>), and amended from time to time. The Operational Policies are incorporated by reference into Hawai'i HIE Data Sharing Agreements and Participation Agreements, and are binding on Participants and their Authorized Users of the System.

**Minimum Necessary.** The standard set forth in HIPAA (45 CFR §164.502(b), 164.514(d)) requiring that reasonable efforts be made to limit access, use and disclosure of PHI to the minimum necessary for a particular purpose or carry out a function related to the health care of an individual.

## 4. Policy

**4.1. Compliance with Applicable Policies, Procedures and Laws.** Participants and the Hawai'i HIE shall request, access, use and disclose PHI via the Health eNet only in manners consistent with the Hawai'i HIE's Operational Policies and Procedures, and all applicable laws; and not for any unlawful or discriminatory purpose.

### 4.2. Appropriate Access, Use and Disclosure

**4.2.1. Participants-General Provisions.** A Participant may query, use or disclose PHI via the Health eNet only in accordance with its Data Sharing Agreement or Participation Agreement, and as permitted by the Operational Policies and Procedures.

Each Participant shall refer to and comply with its own internal policies and procedures regarding the documentation needed and conditions to be met for certain disclosures (i.e. those not for treatment or care coordination).

- 4.2.2. Community Health Record Access by Health Plans.** Access to the Health eNet CHR by Participants that are health plans shall be limited in scope to treatment and care coordination purposes, as provided for by HIPAA.

Procedure
Health plans shall train and supervise their Health eNet Authorized Users regarding the need to only access and use PHI of another Participant for treatment and care coordination purposes, as provided for by HIPAA, i.e.: <ul style="list-style-type: none"><li>• Provision, coordination, or management of healthcare and related services among healthcare providers or by a healthcare provider with a third party;</li><li>• Consultation between healthcare providers regarding a patient; or</li><li>• Referral of a patient from one healthcare provider to another healthcare provider.</li></ul>

- 4.2.3. Community Health Record Access by Business Associates.** A Business Associate may query, use or disclose PHI via the Health eNet only in accordance with its applicable Business Associate Agreement and the Hawai'i HIE's Operational Policies and Procedures. The Business Associate shall be separately provisioned with respect to each Participating Entity on whose behalf it accesses the System.

- 4.2.4. Hawai'i HIE.** The Hawai'i HIE may access, use or disclose PHI via the Health eNet only for audit purposes, access management of the System, incident response and mitigation, and other purposes to the extent necessary and as permitted by Hawai'i's Operational Policies and Procedures, and applicable laws.

- 4.3. Documentation and Reliance.** The requesting Participant shall ensure that it has obtained the required documentation and met the conditions as required by law prior to requesting, accessing, using or disclosing PHI for a particular purpose. Participants that contribute PHI rely on the assumption that Participants accessing the PHI meet all prerequisites under state and federal laws when requesting, accessing, using or disclosing PHI.

Procedure
1. Participants shall maintain policies and procedures, and other documentation related to access, use and disclosure of PHI via the Health eNet, for the period of time specified in the Participant's policies and procedures, or for a minimum of six (6) years, whichever is greater.

- 4.4. Minimum Necessary.** Participants and the Hawai'i HIE shall comply with the Minimum Necessary standard, where applicable.

- 4.4.1. Requests.** Each Participant shall request only the minimum amount of PHI through the System as is reasonably necessary for the intended purpose of the request.

- 4.4.2. **Disclosures.** Participants that have contributed PHI to the Health eNet, or disclose PHI via the Health eNet at the request of another Participant, are entitled to rely on a requesting Participant's request as being consistent with the requesting Participant's minimum necessary policy and purpose for obtaining the PHI.
- 4.4.3. **Authorized Users.** Access to the Health eNet shall be limited to Authorized Users identified by Participants and the Hawai'i HIE, in accordance with the Hawai'i HIE's *Access Management* (HEN-005) Operational Policy and Procedures.

<b>Procedure</b>
The Hawai'i HIE and each Participant shall adopt and apply policies and procedures to limit access to the Health eNet to members of its workforce, business associates and subcontractors who qualify as Authorized Users per the Hawai'i HIE's <i>Access Management</i> (HEN-005) requirements, and only to the extent needed by such Users to perform their job functions or duties.

**4.5. Prohibitions Regarding Access, Use and Disclosure**

- 4.5.1. **Fundraising and Marketing.** Information may not be requested, accessed, used or disclosed via the Health eNet for purposes related to fundraising or marketing. Under no circumstances may such information be sold to third parties, except as expressly permitted under HIPAA.
- 4.5.2. **Health Plans.** A Health plan is not permitted to use information obtained via the Health eNet to deny insurance coverage or benefits to any individual.
- 4.5.3. **Restriction on Disclosures for Payment and Health Care Operations.** A Participant shall not use the System to disclose an individual's PHI to a health plan, if (a) the individual has requested a restriction of disclosure of PHI, (b) the disclosure is for the purpose of carrying out payment or health care operations and is not otherwise required by law, and (c) the PHI pertains solely to a health care item or service for which the individual, or person other than the health plan on behalf of the individual, has paid the Participant in full.

- 4.6. **Re-Use and Re-Disclosure.** A Participant that has obtained information via the Health eNet and merged the information into the Participant's own records may treat the merged information as part of its own records, and thereafter use and disclose the merged information only in a manner consistent with its own information privacy and security policies, and applicable laws.

A Participant shall not query PHI via the Health eNet for the purpose of disclosing the queried information to third parties, other than for the Participant's qualifying treatment and care coordination purposes.

**4.7. Disclosures to Government Agencies and Officials**

- 4.7.1. Disclosures for Public Health Oversight, Judicial or Administrative Proceedings, or Law Enforcement.** If a government official requests PHI from the Hawai'i HIE via a valid court order, subpoena, warrant, summons, or other similar document, the Hawai'i HIE may provide the requested PHI as permitted by and in accordance with applicable laws.
- 4.7.2. Responding to Inquiries from National Protective Service, Security and Intelligence Officials.** If a federal government official requests PHI from the Hawai'i HIE for intelligence, counter-intelligence, or other national security activities, the Hawai'i HIE may provide the requested PHI as permitted by and in accordance with applicable laws without first obtaining specific patient authorization.
- 4.7.3. Disclosures to Med-QUEST.** The Hawai'i HIE may transmit PHI to the State of Hawaii, Department of Human Services, Med-QUEST Division if such transmission is permitted by law and/or by provider agreement under the Hawaii State Medicaid Program.
- 4.7.4. Documentation Fees.** The Hawai'i HIE shall charge reasonable fees for production of documents.

<b>Procedure Step</b>
1. The Hawai'i HIE will provide notification to the HIPAA covered entity/Participant's Primary Point of Contact prior to or at the time of release of PHI to the requesting government official, unless such notification is expressly not permitted in writing within the document provided by the requester.
2. Prior to releasing the PHI, the Hawai'i HIE may verify the validity of the request (e.g. by contacting the government agency requesting the PHI), and/or the authority of the government official making the request (e.g. by asking the official to present his/her ID issued by the requesting agency).
3. The Hawai'i HIE will release the minimum-necessary PHI to fulfill the request.
4. The Hawai'i HIE will obtain a signed attestation of receipt of the PHI by the government official (e.g. via signed attestation, secured e-mail return receipt, U.S. Postal Service delivery confirmation).
5. The Hawai'i HIE, in accordance with applicable laws, shall establish a reasonable fee schedule.

- 4.8. Accounting of Disclosures.** Participants and the Hawai'i HIE shall account for information disclosed via the Health eNet, as required by HIPAA and other applicable laws, and in accordance with the "Accounting of Disclosures" provisions in the Hawai'i HIE's *Individual Rights* (HEN-008) Operational Policy and Procedures.

#### 4.8.1. Participants

Procedure Step
1. Each Participant shall be responsible to track and account for its own required disclosures of information, including those made to and/or via the Health eNet, the Participant’s own accounting-of-disclosures policies and procedures.

#### 4.8.2. Hawai’i HIE

Procedure Step
1. The Hawai’i HIE shall maintain records of disclosures it has made as required by law, and provide a Participant an accounting-of-disclosures report upon request to fulfill the Participant’s HIPAA compliance obligations, as prescribed in its <i>Individual Rights</i> (HEN-008) Operational Policy and Procedures.

**4.9. Incorrect or Inappropriate Use or Disclosure.** In the event any PHI is used or disclosed via the Health eNet other than for permissible purposes under applicable laws and the Hawai’i HIE’s Operational Policies and Procedures, the Hawai’i HIE and the Participant(s) involved with any such use or disclosure shall cooperate to investigate and mitigate the incident as prescribed in the Hawai’i HIE’s *Incident Response and Mitigation* (HEN-012) Operational Policy and Procedures.

Procedure Step
1. The Hawai’i HIE Incident Response Team (IRT) shall work with Participants’ Incident Response Points of Contact and other parties as necessary to investigate, mitigate and provide required notifications according to the <i>Incident Response and Mitigation</i> (HEN-012) provisions.
2. Participants shall undertake additional mitigations as necessary, according to HIPAA and other applicable laws.

### 5. Revision History

Revision Date	Revision Type*	Author(s)	Revision Rationale, Description	Approved by
May 24, 2013	New	Legal/Policy Committee (policy sub-committee)	Initial version of policy	Hawai’i HIE Board of Directors
Dec. 16, 2015	Amendment	Legal/Policy Committee	Table of contents, section numbering and procedures added; existing definitions and policy sections edited to reflect current Health eNet services and operations	Hawai’i HIE Board of Directors

Jan. 17, 2018	Amendment	Legal/Policy Committee	Added Section 4.7.3 permitting disclosures to Med-QUEST	Hawai'i HIE Board of Directors
Feb. 20, 2019	Amendment	Legal/Policy Committee	Scheduled substantive review of operational policy; edited for conformity with applicable laws, standards, and guidance	Hawai'i HIE Board of Directors

\* Revision Type options = New, Amendment, Minor Amendment, Consolidation (i.e. merging of multiple policies)