

POLICIES AND PROCEDURES
TOPIC: Patient Consent – Permissible Purposes
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I. BACKGROUND AND PURPOSE

The purpose of this policy is to describe the Permissible Purposes for which Protected Health Information may be disclosed through the Health Information Exchange from one Participating Organization to another. Absent a Permissible Purpose, no information exchange will be authorized. The placement of appropriate limits upon the Health Information Exchange through the definition of what constitutes a Permissible Purpose will enhance Patient and provider confidence in the exchange process, and will minimize the potential for misuse or abuse of Protected Health Information.

II. POLICY

One of the fundamental principles identified by the Office of the National Coordinator for Health Information Technology is the need for appropriate limits on the collection, use, and disclosure of Protected Health Information by a Health Information Exchange organization such as the WVHIN. The WVHIN must establish limitations on Participating Organizations to ensure that Protected Health Information will only be disclosed for a Permissible Purpose.

Any disclosure of Protected Health Information for a Permissible Purpose must be conducted in compliance with federal and state laws. The Permissible Purposes for which Protected Health Information may currently be disclosed through the Health Information Exchange are:

- ▶ Treatment
- ▶ Emergency Treatment
- ▶ Payment
- ▶ Limited Health Care Operations
- ▶ Public Health Reporting

The scope of each of these Permissible Purposes under the Health Information Exchange sponsored by the WVHIN is further described below.

The Permissible Purpose of Treatment allows the exchange of Protected Health Information from one Participating Organization through the Health Information Exchange in response to an Inquiry from another Participating Organization. Treatment means the provision of health care items or services to a Patient. The provision of health care items or services may

include direct Patient care as well as the consultation, coordination, management, or referral of a Patient between or from one Participating Organization to another. Treatment shall be limited to the provision of health care items or services to the Patient who is the subject of the information (except in the case of mother/infant). A disclosure for the Permissible Purpose of Treatment may occur through the Health Information Exchange only if the Patient has not elected to Opt-Out.

The Permissible Purpose of Emergency Treatment allows the exchange of Protected Health Information from one Participating Organization through the Health Information Exchange in response to an Inquiry from another Participating Organization. Emergency Treatment means the provision health care items or services to a Patient suffering from a condition which poses an immediate threat to the health of the Patient (for example, death or serious impairment to one or more bodily systems, organs, or parts), and which requires immediate medical intervention. Emergency Treatment is a distinct subset of Treatment, although it is sometimes made subject to differing policies and procedures by the WVHIN. A disclosure for the Permissible Purpose of Emergency Treatment may occur through the Health Information Exchange only if the Patient has not elected to Opt-Out.

The Permissible Purpose of Payment allows the exchange of Protected Health Information between Participating Organizations for Payment-related activities which relate to the Patient who is the subject of the Inquiry. "Payment" shall have the same meaning as set forth in 45 C.F.R. § 164.501, 45 C.F.R. § 164.506(c), and as further set forth in Policy and Procedure Document Number 1404. Payment is defined under HIPAA as any activity undertaken by a Health Care Provider or Health Plan to obtain or provide reimbursement for the provision of health care to a Patient.

For the purposes of the Health Information Exchange, Payment includes but is not limited to activities arising out of billing, claims management, and collection activities, obtaining payment under a contract for reinsurance, obtaining premiums for Health Plan coverage, determining eligibility or coverage, coordinating benefits with other Health Plans, performing Health Plan risk adjustment based on enrollee health status and demographic characteristics, reviewing medical necessity, providing precertification or preauthorization of services, utilization review, and other similar activities. The exchange of Protected Health Information in response to an Inquiry for information related to Payment must contain only the Minimum Necessary amount of Protected Health Information as is required or authorized for the specific requested Payment purpose. A disclosure for the Permissible Purpose of Payment may occur through the Health Information Exchange only if the Patient has not elected to Opt-Out.

The Permissible Purpose of Limited Health Care Operations allows the exchange of Protected Health Information between Participating Organizations for certain Health Care Operations of a Participating Organization if: (a) the Participating Organization submitting the Inquiry has or had a Treatment or Payment relationship with the Patient whose Protected Health Information is being requested, (b) the Protected Health Information pertains to such relationship, and (c) the purpose of the Inquiry is listed in paragraph (1) or (2) of the definition of Health Care Operations in 45 C.F.R. §164.501 or is for the purpose of health care fraud and abuse detection or compliance. The exchange of Protected Health Information in response to an Inquiry for Limited Health Care Operations must contain only the Minimum Necessary amount

of Protected Health Information as is required or authorized for the specific requested Limited Health Care Operations purpose. A disclosure for the Permissible Purpose of Limited Health Care Operations may occur through the Health Information Exchange only if the Patient has not elected to Opt-Out.

It is important to reiterate that HIPAA does not authorize the disclosure of Protected Health Information for all types of Health Care Operations included within the definition of that term set forth in 45 C.F.R. §164.501. Rather, disclosure without Patient Authorization may occur only for those health care improvement and quality enhancement purposes in paragraph (1) and (2) of the definition, or for the purpose of health care fraud and abuse detection or compliance.

For the purposes of the Health Information Exchange, “Limited Health Care Operations” specifically includes quality assessment and improvement activities (including utilization review), outcomes evaluation, development of clinical guidelines, population-based activities relating to improving health and reducing health care costs, protocol development, case management and care coordination, and contacting health care providers and patients with information about Treatment alternatives. The specific requirements related to disclosure of Protected Health Information for Limited Health Care Operations is further set forth in Policy and Procedure Document Number 1405.

The Permissible Purpose of Public Health Reporting allows the exchange of Protected Health Information from a Participating Organization to a federal or state agency through the Health Information Exchange for the reporting and surveillance of specific health conditions identified under and required or authorized by state or federal law, and for the reporting of immunization data. All reports for the Permissible Purpose of Public Health Reporting must comply with the requirements established by the agency that receives the report. Such reporting must contain only the Minimum Necessary of Protected Health Information and/or Protected Demographic Information as is required or authorized for the specific reporting purpose. For purposes of the WVHIN’s policies, a Patient’s historical public health data from West Virginia’s immunization registry may be obtained through an Inquiry for the Permissible Purposes of Treatment and Emergency Treatment. A disclosure for the Permissible Purpose of Public Health Reporting may be undertaken regardless of whether a Patient decides to Opt-Out of the Health Information Exchange.

III. PROCEDURES

A. Patient Procedures.

1. A Patient who has not Opted-Out shall be deemed to have given his or her Consent to participate in the Health Information Exchange, and his or her Protected Health Information may be exchanged for the Permissible Purposes of Treatment, Emergency Treatment, Payment, Limited Health Care Operations, and Public Health Reporting.

2. The Protected Health Information of a Patient who has Opted-Out of the Health Information Exchange shall not be exchanged for any Permissible Purpose except Public Health Reporting.

B. Participating Organization Procedures.

1. Each Inquiry seeking a Patient's Protected Health Information through the Health Information Exchange must be limited to a Permissible Purpose. All Inquiries must be submitted electronically.

2. When submitting an Inquiry under Paragraph 1 above, a Participating Organization must certify electronically to the WVHIN that it has an existing Treatment or Payment relationship to the Patient sufficient to justify the Permissible Purposes of Treatment, Emergency Treatment, Payment, or Limited Health Care Operations.

3. Any Protected Health Information obtained by a Participating Organization through the Health Information Exchange as a result of an Inquiry must be used only for the Permissible Purpose for which it was sought. An Inquiry for the Permissible Purpose of Treatment, Emergency Treatment, Payment, or Limited Health Care Operations must be limited to the Protected Health Information of the Patient who is the subject of the Inquiry (except in the case of mother/infant).

4. Participating Organizations seeking the exchange of Sensitive Health Information must comply with the Sensitive Health Information policies and procedures (see Policy and Procedure Document Number 102), and where necessary, must obtain the specific written authorization of the Patient.

5. Participating Organizations will cooperate with the WVHIN to electronically flag specific health conditions required or authorized by law to be reported to federal or state agencies for surveillance reasons pursuant to the Permissible Purpose of Public Health Reporting. Likewise, Participating Organizations will similarly cooperate with the WVHIN to flag and report immunization data. Such reporting must contain only the Minimum Necessary of Protected Health Information and/or Protected Demographic Information as is required by law.

6. Participating Organizations seeking the exchange of Protected Health Information for Payment purposes shall comply with Policy and Procedure Document Number 1404.

7. Participating Organizations seeking the exchange of Protected Health Information for Limited Health Care Operations purposes shall comply with Policy and Procedure Document Number 1405.

C. WVHIN Procedures.

1. Each Inquiry seeking a Patient's Protected Health Information through the Health Information Exchange must be limited to a Permissible Purpose. All Inquiries must be submitted electronically.

2. If a Patient has not Opted-Out, the WVHIN's Health Information Exchange will share Protected Health Information in response to an Inquiry from a Participating Organization if the Participating Organization certifies electronically to the WVHIN that it has an existing Treatment relationship to the Patient sufficient to justify the Permissible Purposes of Treatment, Emergency Treatment, Limited Health Care Operations, or Payment.

3. The WVHIN will require that all Inquiries seeking the exchange of Sensitive Health Information are in compliance with the Sensitive Health Information policies and procedures (see Policy and Procedure Document Number 102).

4. For a Patient who has Opted-Out of the Health Information Exchange, the WVHIN will ensure that no Protected Health Information will be shared for any Permissible Purposes other than Public Health Reporting. Instead, the Participating Organization that submitted the Inquiry will receive a message: that the Patient has Opted-Out of the WVHIN's Health Information Exchange.

5. The WVHIN will cooperate with Participating Organizations to electronically flag specific health conditions required or authorized by law to be reported to federal or state agencies for surveillance reasons pursuant to the Permissible Purpose of Public Health Reporting. Likewise, the WVHIN will similarly cooperate with Participating Organizations to flag and report immunization data. Such reporting must contain only the Minimum Necessary of Protected Health Information and/or Protected Demographic Information as is required or authorized by law.

6. The WVHIN may Deidentify Protected Health Information, and may use or disclose such Deidentified data for any public health purpose approved by the WVHIN Board of Directors.

7. Nothing in this Policy and Procedure will prevent the WVHIN from using and disclosing Protected Health Information as necessary to permit the ongoing operation, maintenance, and repair of its Health Information Exchange; provided, that third party vendors involved in operation, maintenance, and repair activities must enter into a Business Associate Agreement with the WVHIN. The purpose of this provision is to ensure that the WVHIN may undertake uses and disclosures necessary to establish and maintain connectivity with Participating Organizations, and to perform necessary repair functions.

8. Under no circumstances may Protected Health Information be used, disclosed, or sold by the WVHIN for marketing or other commercial purposes without the prior written authorization of the affected Patient.