



Washington State Health Information Exchange

Business Associate Policy

Effective Date: 3/1/2011

This OneHealthPort HIE Business Associate Policy is published by OneHealthPort and applies to the operation and use of the HIE Services by any Participant in the OneHealthPort HIE.

This Policy is subject to the applicable Participation Agreement and the OneHealthPort HIE Participation Terms and Conditions. The Participation Terms and Conditions, additional important information in the HIE FAQs, and the HIE Glossary, are all available online at <http://www.onehealthport.com/HIE/index.php>.

A. Operation or management of certain of the HIE Services may entail the obtaining, Use or Disclosure of Protected Health Information by OneHealthPort, or by Services Vendors acting under contract to OneHealthPort, to perform functions or activities on behalf of Participants which are Covered Entities or Business Associates.

B. The provisions of this Business Associate Policy are effective between OneHealthPort and Participants which are Covered Entities or Business Associates under HIPAA and HITECH, for or on behalf of which OneHealthPort obtains, Uses or Discloses Protected Health Information for purposes of any Service, and are intended to provide for compliance with HIPAA, 45 CFR §§ 164.314(a), .502(e) and .504(e), and with HITECH §§ 13401(a) and 13404(a), as implemented by regulation, and as the laws and regulations may be amended.

1. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION. OneHealthPort and Subcontractors may use or disclose Protected Health Information obtained from or on behalf of any Participant for the following purposes, provided that in all cases it shall use or disclose only the Minimum Necessary:

- a. For purposes of installing, maintaining, upgrading or removing software or hardware supporting of the HIE Services.
- b. In order to provide technical and administrative support to Participants and HIE Users in the use of the HIE Services.
- c. For purposes of OneHealthPort's proper management and administration, and fulfillment of OneHealthPort's legal obligations.
- d. If Required by Law.

e. As otherwise expressly authorized in writing by the Participant, to the extent not prohibited by law or by any HIE Policy.

2. PROHIBITED USES AND DISCLOSURES. OneHealthPort shall not use or disclose Protected Health Information obtained from or on behalf of the Participant for any purpose not permitted by this Business Associate Policy.

3. SECURITY INCIDENTS AND UNAUTHORIZED USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION. OneHealthPort shall notify impacted Participants of Security Incidents and any Unauthorized Use or Disclosure as provided in the Security Policy, available at http://www.onehealthport.com/HIE/project_tracking.php.

4. SUBCONTRACTORS. OneHealthPort may make use of Services Vendors to perform functions and activities involving Protected Health Information for purposes permitted by this Agreement, provided that any such Services Vendor shall be considered a Subcontractor, and that OneHealthPort first obtains a written agreement from the Services Vendor requiring it to comply with privacy and security requirements equivalent to or More Stringent than those assumed by OneHealthPort under this Business Associate Policy, and which otherwise complies with regulatory requirements for Subcontractors.

5. ONEHEALTHPORT RELATIONSHIP TO INDIVIDUAL DATA SUBJECT. The parties acknowledge that OneHealthPort has no direct relationship with Individuals who may be the subject of Protected Health Information which may be obtained or disclosed through the HIE Services, but may maintain Designated Record Sets including Protected Health Information for certain Services. The parties therefore agree that:

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a. Requests from Individuals for (i) access to, (ii) copies of, (iii) amendment of, (iv) Additional Restrictions on, or (v) an Accounting of Disclosures with respect to Protected Health Information which pertains to them shall be directed to the applicable Participant; and

b. In the event that an Individual contacts OneHealthPort in order to request any such action with respect to Protected Health Information which may be in or accessible through a Service, OneHealthPort will refer the Individual to the applicable Participant for a determination of the appropriate response, and shall not perform the requested action or provide the requested information directly to or for the Individual.

6. ACCESS TO INFORMATION. Upon a request by Participant for Access to Protected Health Information, OneHealthPort shall provide any Protected Health Information which OneHealthPort or any Subcontractor maintains in a Designated Record Set within a reasonably prompt period of time, in the format and medium in which it is maintained by or for OneHealthPort.

7. AMENDMENT OF INFORMATION. Upon request by Participant for amendment of Protected Health Information, OneHealthPort shall amend any Protected Health Information which OneHealthPort or any Subcontractor maintains in a Designated Record Set, as directed by the Participant.

8. ADDITIONAL RESTRICTIONS ON INFORMATION. Upon request by Participant for any restrictions on the use or disclosure of Protected Health Information which are in addition to the restrictions provided for in the HIE Policies, OneHealthPort shall implement the requested restrictions for any Protected Health Information which OneHealthPort or any Subcontractor maintains in a Designated Record Set, as directed by the Participant; provided that if OneHealthPort determines that the additional restrictions materially interfere with the use or disclosure of the Protected Health Information for an authorized purpose which is the purpose for which the Protected Health Information was maintained, OneHealthPort may elect instead to cease use and disclosure of the Protected Health Information altogether.

9. ONEHEALTHPORT DISCLOSURE TRACKING AND ACCOUNTING. Upon written request by an impacted Participant within ten (10) business days OneHealthPort shall provide an Accounting of

Disclosures with respect to any Individual with respect to whom OneHealthPort or any Subcontractor has disclosed Protected Health Information; provided that:

a. OneHealthPort shall have no obligation to track or account for Disclosures of Protected Health Information which are (i) executed by use of a Service by or for the Participant or any party other than OneHealthPort, a Subcontractor or a member of OneHealthPort's or a Subcontractor's Workforce; or (ii) made for any purpose for which an Accounting of Disclosures is not required under the Privacy Rule.

For example, and without limiting this provision, no Accounting of Disclosures may be required:

- For the transmission of a secure message including Protected Health Information from one HIE User to another HIE User.
- For a Disclosure of Protected Health Information from the Sentinel Service initiated by an HIE User associated with the Participant whose messages are the subject of the Disclosure.
- For a Disclosure of Protected Health Information from a Master Patient Index upon request of a HIE User, where the HIE User indicates the Disclosure is intended to confirm that appropriate patient records are used for Treatment of the Individual.

b. Any such Accounting of Disclosures shall include (i) the Disclosure date, (ii) the name, Internet Protocol (IP) address of the receiving system (if applicable), and (if known) physical address of the person or entity to whom the Disclosure was made, (iii) a brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose(s) of the Disclosure.

10. HIE SERVICES SECURITY SAFEGUARDS.

OneHealthPort shall provide for Reasonable and Appropriate Safeguards for the Services and any Protected Health Information in its possession or control, subject to the Security Policy, available at http://www.onehealthport.com/HIE/project_tracking.php.

11. OBLIGATIONS OF COVERED ENTITY.

a. *Notice of Privacy Practices.* Participant shall be responsible for ensuring that its Notice of Privacy Practices includes any notice or

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disclosure of its use of any Service with respect to Protected Health Information which the Participant considers necessary or appropriate. In the event the Notice of Privacy Practices establishes or includes any restrictions on the use or disclosure of Protected Health Information which are in addition to the restrictions provided for in the OneHealthPort HIE policies and procedures, Section 8 of this Business Associate Policy shall apply.

b. *Authorization.* Participant shall be responsible for obtaining any Consent or Authorization for the use of the HIE or any Service with respect to Protected Health Information which the Participant considers necessary or appropriate. In the event a Consent or Authorization establishes or includes any restrictions on the use or disclosure of Protected Health Information which are in addition to the restrictions provided for in the OneHealthPort HIE policies and procedures, Section 8 of this Business Associate Policy shall apply.

c. *Requests in Violation of Privacy Rule.* Participant Entity shall not request OneHealthPort to use or disclose Protected Health Information in any manner or for any purpose that would not be permissible under the Privacy or Security Rule if done by Participant.

12. TERMINATION FOR VIOLATION OF HIE BUSINESS ASSOCIATE POLICY. The Participant may terminate the Participation Agreement for a material violation of this Business Associate Policy by OneHealthPort, its subcontractors or Workforce members, as provided in the Participation Terms and Conditions.

13. COMPLIANCE RECORDS. OneHealthPort shall retain records of its security policies and procedures, Subcontractor contracts, Accountings of Disclosures, communications with Individuals, Security Incident reports, and other documentation material to its compliance with this Business Associate Policy for a period of no less than six (6) years from the later of the date on which it was created or the last date on which the document was in effect (if applicable).

14. HIPAA RECORDS ACCESS. Upon written request OneHealthPort shall make its internal practices, books and records pertaining to its use and disclosure of Protected Health Information received from, or created or received by or for OneHealthPort on behalf of the Participant available, at the Participant's expense for purposes of determining the Participant's compliance with HIPAA,

a. If to the Participant, to an independent third-party auditor qualified to assess health information exchange operations and compliance, at OneHealthPort's offices during normal business hours, upon no less than ten (10) business days' prior notice; and

b. If to DHHS, at a time and place designated by DHHS, subject to OneHealthPort's right to seek a time and place convenient to OneHealthPort as well as DHHS.

c. OneHealthPort's obligation to provide access to records under this Section shall extend for the period during which it is required to maintain compliance records under Section 13, and survive the termination of the Participation Agreement for such period if applicable.

15. DHHS NOTIFICATION OF BREACH. In the event the Participant (a) has knowledge of a pattern of activity or practice of OneHealthPort that constitutes a material breach or violation of this Business Associate Policy, (b) has taken reasonable steps to cure the breach or end the violation which were unsuccessful, including the procedures required for a Curable Breach under the Participation Terms and Conditions, and (c) determines that it would not be feasible to terminate use of the Participation Agreement to cure the breach or end the violation, the Participant may report the breach or violation to DHHS.