

HEALTH INFORMATION EXCHANGE POLICIES

Policy: Business Associates

Number: 15

Applicability: Provide, Exchanger

Effective: 9/23/2013

Policy:

Access to and use of Data maintained by Jersey Health Connect on behalf of Participants that are Covered Entities is limited to those set forth in a HIPAA Business Associate Agreement.

Procedure:

1) Access to Jersey Health Connect

- a) Each Participant shall allow access to Jersey Health Connect only to those employees, agents and contractors who have a legitimate and appropriate need to use Data in Jersey Health Connect in order to perform a service or function for or on behalf of such Participant.
- b) Any employee, agent or contractor Participant wishes to designate an Authorized User must first be registered with Jersey Health Connect. Absolutely NO employee, agent, contractor or other individual shall be provided with access to Jersey Health Connect except in accordance with the Access and Authentication Policies of these HIE Policies.

2) Training

- a) Participants will ensure ALL employees, agents and contractors complete appropriate training to ensure compliance with these HIE Policies.
- b) Such training shall include a detailed review of applicable Participant's privacy and security policies, as well as these HIE Policies.
- c) Written documentation of completion of such training shall be maintained.

3) Non-Compliance

- a) Discipline.
 - (1) Each Participant shall implement procedures to hold their employees, agents and contractors accountable for accessing, using, or disclosing Data through Jersey Health Connect only as permitted by these HIE Policies and the Participation Agreement through disciplinary measures.
 - (2) Such discipline measures shall include, but are not limited to, verbal and written warnings, demotion, termination, and retraining where appropriate in accordance with the Enforcement & Sanctions Policy.

b) Reporting of Noncompliance.

- (1) Each Participant shall have a mechanism for, and shall require, all employees, agents and contractors to report any incidents of noncompliance with these HIE Policies to the Participant.
- (2) Participants shall require any Business Associates (BA) to promptly and without unreasonable delay, but in no case later than the amount of days specified in its BAA, report violations of these HIE Policies, HIPAA, HITECH and any other federal and/or state laws by members of their respective workforces, including but not limited to actual or potential Security Incidents or Breaches.
- (3) Each Participant also shall establish a process for Patients whose health information is included in Jersey Health Connect to report any incidents of noncompliance with these JHC Polices or concerns about improper disclosures concerning their health information.

4) HIPAA Business Associates

- a) HIPAA BA Agreements shall be executed when required under HIPAA and HITECH.
- b) Participants shall be responsible for identifying any state, federal or local laws which would require such Participant to obtain Patient authorization, consent or other documentation prior to disclosing any PHI/Data to a HIPAA BA and obtaining such Patient authorization or consent prior to disclosing PHI/Data to such BAs.
- c) Participants who seek to designate BAs as Authorized Users of Jersey Health Connect must execute a HIPAA BA Agreement with each applicable BA prior to applying for registration of such BAs as Authorized Users. Jersey Health Connect shall determine whether to approve a Participant's BA as an Authorized User on a case-by-case basis.
- d) Jersey Health Connect takes seriously its obligations and responsibilities in connection with certain operations of Jersey Health Connect that will make it a HIPAA BA for every Participant, including in connection with making available to Participants the HIE Technology, HIE Services, and performing functions in connection with the Jersey Health Connect Board (collectively, "the BA Services").
- e) In connection with performing the BA Services, Jersey Health Connect shall sign a HIPAA BA Agreement with each Participant of Jersey Health Connect, and shall limit its access to and use of any Data that a Participant may have supplied or made available to Jersey Health Connect to only the following

purposes:

- (1) Testing functionality of the Participant's connection to Jersey Health Connect, including interfaces;
 - (2) Trouble shooting Jersey Health Connect technology-related issues;
 - (3) Auditing for compliance with these HIE Policies;
 - (4) Facilitating Security Breach investigations; and
 - (5) Any other BA Services and health care operations that Participant may specifically request Jersey Health Connect to perform on the Participant's behalf in which require Jersey Health Connect's access to or use of Participant's Data, to the extent permitted under applicable law. If any of the BA Services requested are broader than those listed under this Section, then a written Addendum to the Participant Agreement and HIPAA BA Agreement Addendum shall be signed by the Participant and Jersey Health Connect before Jersey Health Connect performs any such expanded BA Service on behalf of a particular Participant.
- f) Jersey Health Connect shall implement adequate technical, administrative and physical safeguards to "separate" its employees engaged in performing BA Services for Participants and prevent them from disclosing any Data to others at Jersey Health Connect who have no role or responsibilities in connection with performing HIPAA BAA functions for Participants.
- 5) PHR Vendor Responsibilities
- a) The PHR Vendor shall comply with the rules and regulations governing security breaches of PHRs as promulgated by the Federal Trade Commission (FTC). [Note that the PHR Vendor, if a HIPAA BA of the Participants, will have to comply with HITECH]
 - b) The PHR Vendor shall be responsible for notifying Participants and/or Jersey Health Connect in the event an actual or potential security incident or breach is discovered by the PHR Vendor or its employees, workforce members and agents as well as Patients who may have been affected by the actual or potential security incident or breach.
 - c) The PHR Vendor shall be solely responsible for providing notice to Patients as required by the FTC Breach Notification Rule.
- 6) Subcontractors
- a) Jersey Health Connect will ensure that any subcontractor which may create, receives, maintain or transmit PHI on its behalf agrees to the same restrictions and conditions which apply to Jersey Health Connect with respect to such information, signs a HIPAA BAA, and agrees to comply with the HIPAA Security Rule.

b) Jersey Health Connect acknowledges that any subcontractor that creates, receives, maintains or transmits PHI for or on its behalf is likewise a HIPAA Business Associate. Jersey Health Connect will ensure that, in accordance with 164.502(e)(1)(ii), any agents or subcontractors that receive, maintain or transmit PHI for or on Jersey Health Connect's behalf agree to the *same restrictions and conditions* that apply to Jersey Health Connect with respect to such information the same or substantially similar to the Form HIPAA Subcontractor BAA. Jersey Health Connect will require such agents or subcontractors to comply with the Security Rule and to agree to implement *reasonable and appropriate safeguards* with respect to such information in order to protect it.

c) Jersey Health Connect will appropriately monitor all subcontractors that may create, receive, transmit or maintain PHI in connection with services or functions they are engaged to perform on Jersey Health Connect's behalf. All active subcontractor HIPAA BAAs will be tracked on Jersey Health Connect's Sub-Contractor BA Agreement Tracking Tool in order to appropriately monitor uses and disclosures of PHI to and from such sub-contractors in accordance with the applicable HIPAA BAAs.

d) In the event it becomes known to Jersey Health Connect of a pattern or practice of activity of any one or more of its subcontractors to which it provides PHI that constitutes a material breach or violation of the subcontractor's HIPAA BAA with Jersey Health Connect, Jersey Health Connect will take such reasonable steps as necessary to notify the subcontractor of the breach and require such subcontractor to correct such breach within an identified timeframe or to terminate the contract as set forth in the applicable HIPAA BAA.

Revision History:

3/12/2012 New Policy

9/13/2013 Revised Effective 9/23/2013