

## HEALTH INFORMATION EXCHANGE POLICIES

Policy: Enforcement & Sanctions

Number: 20

Applicability: Viewer, Provider, Receiver, Exchanger

Effective: 9/23/2013

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### Policy:

Jersey Health Connect shall ensure compliance with these HIE Policies, Participation Agreements, as well as HIPAA and other applicable federal and/or state laws, and ensure appropriate actions are taken against non-compliant Participants, Authorized Users and other applicable parties.

### Procedure:

#### 1) Enforcement by Participant

- a) Each Participant shall establish policies that require Authorized Users and all other workforce members, agents and contractors to comply with HIE Policies when accessing and using Jersey Health Connect.
- b) Each Participant shall enforce compliance with these HIE Policies by their respective workforce members, agents and contractors.
- c) If a Participant has actual or constructive knowledge of a violation or potential violation of the HIE Policies, the Participant shall report such violation to the Executive Director. This reporting does not relieve the Participant from its own continuing duty to take appropriate disciplinary action against its workforce members for violations of internal policies.
- d) A Participant shall require Authorized Users to report violations or potential violations of either its own internal policies or HIE Policies to that Participant and shall take appropriate disciplinary action as may be necessary to mitigate harm and/or prevent future violations.

#### 2) Enforcement by Jersey Health Connect

- a) Jersey Health Connect shall establish procedures for auditing compliance with the HIE Policies and for awarding sanctions for non-compliance with HIE Policies, paying particular attention to violations of state and federal law with respect to privacy and security of Patient Data.
- b) Jersey Health Connect shall authorize the Executive Director, the Privacy Officer and Security Officer to establish operational procedures for auditing compliance with the HIE Policies and for conducting investigations upon discovery of potential non-compliant activity and upon receipt of a Complaint.

- c) During the course of an investigation, a Participant or Authorized User's access to Jersey Health Connect may be temporarily suspended for up to five (5) business days at the discretion of the Executive Director or the JHC Privacy and Security Officer until the conclusion of the investigation.
  - d) Depending on the findings of the audits and discovery activities ("findings"), the Executive Director is responsible for presenting such findings to the Jersey Health Connect Board in a timely manner for its review and assessment of sanctions, if any.
- 3) Sanctions <sup>i</sup>
- a) Depending on the findings and severity of the violation, the Jersey Health Connect Board may issue sanctions, at its sole discretion, against Participants or Authorized Users. Types of sanctions that may be imposed include:
  - b) An extended period of full suspension from Jersey Health Connect such as for a period of several months;
  - c) Establishment of a probationary period for continued use of Jersey Health Connect in the manner in which it was previously used, during which Jersey Health Connect shall conduct frequent audits to ensure full compliance with the HIE Policies and applicable law;
  - d) Establishment of a probationary period for continued restricted use of Jersey Health Connect (e.g., usage limited to Jersey Health Connect for selected care scenarios, or to the Jersey Health Connect portal only), during which Jersey Health Connect shall conduct frequent audits to ensure full compliance with the HIE Policies and applicable law;
  - e) Termination of usage rights to Jersey Health Connect, including IMMEDIATE TERMINATION OF ACCESS to Jersey Health Connect for findings of egregious violations of HIPAA, or other federal and/or state laws. If immediate termination of access is not reasonably practicable, such termination shall occur as promptly as reasonably practicable;
  - f) Sanctions may be imposed against a Participant and its entire staff of Authorized Users, or to selected Authorized Users who are employees or agents of the Participants at the sole discretion of the Jersey Health Connect Board.
  - g) Sanctions imposed by the Jersey Health Connect Board shall affect only an Authorize User and/or Participant's rights with regard to Jersey Health Connect and under the applicable Participation Agreement. These sanctions shall not directly terminate or modify any rights or privileges (e.g., credentialing, privileges, etc.) That an Authorized User may have independently with a Participant. Other than as required under section I of this Policy, any employment-related or other disciplinary actions taken against an Authorized User or workforce member of a Participant is reserved to the respective Participant such as re-training requirements or internal temporary access prohibitions.

- h) If the Jersey Health Connect Board determines that an issue involving an Authorized User or Participant should also be separately reviewed by an oversight, enforcement or credentialing body of another Participant (hereafter, referred to as a “Separate Enforcement Body”), including, for instance, the Medical Staff or Medical Executive Committee of Atlantic Health, the Jersey Health Connect Board *may* furnish to such Separate Enforcement Body relevant information obtained in connection with an Authorized User’s violation of access and use of Jersey Health Connect as may be required to allow such Separate Enforcement Body to evaluate and investigate whether additional disciplinary or other action should be separately taken against such Authorized User and/or Participant. Other than as set forth under section III of this Policy, any such additional disciplinary actions that may be taken against an Authorized User or Participant are reserved to such Separate Enforcement Body.
  - i) In the event that the Participant or Authorized User is a member of one or more of the Participant Hospital Medical Staffs, the Jersey Health Connect Board will formally notify the appropriate presidents of such medical staffs of the violation and sanction assessed by the Jersey Health Connect Board.
  - j) The Jersey Health Connect Board shall comply with all federal and/or state laws that require reporting of legal violations to state and federal authorities. The Jersey Health Connect Board shall cooperate with state and federal authorities for any investigation that such authorities may initiate such as Medicaid audits, OIG fraud and abuse investigations, and professional licensing reviews.
- 4) Appeals
- a) An Authorized User or Participant who has been sanctioned under this Policy (“Recipient”) shall be afforded the right to an appeal of the decision of the Jersey Health Connect Board. The appeal must be in writing and sent to the Jersey Health Connect Board care of Jersey Health Connect. The writing must state the reasons and supporting information as to why the sanction imposed against the Recipient should be reconsidered by the Jersey Health Connect Board.
  - b) The Jersey Health Connect Board may request at its discretion an in-person meeting with the Recipient. A Recipient may elect to be represented by legal counsel, however, a Recipient shall be responsible for obtaining and for any legal fees associated with such representation.
  - c) The appeals process shall commence upon the business day the Recipient’s writing is received on. The appeals process shall be completed no less than twenty (20) business days, which are Monday through Friday, excluding federal holidays. A letter sent through the U.S. Postal Service or a commercial delivery service by first-class mail with signature confirmation shall be the only acceptable means of delivering the letter.
- 5) This JHC Policy shall not prevent the Jersey Health Connect or Recipient from exercising any rights that may be provided under the relevant Participant Agreement.

Revision History:

3/12/2012 New Policy

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

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<sup>i</sup> New Jersey Health Information Network (NJHIN) Security Policy and Procedure 3.3, "Access." This policy and procedure requires termination of access and other sanctions to redress policy and procedure violations. See also NJHIN Security Policy and Procedure 3.5, "Incident and Breach," which requires suspensions and sanctions for breaches.