

HEALTH INFORMATION EXCHANGE POLICIES

Policy: Patient Rights

Number: 4

Applicability: Provider, Exchanger

Effective: 9/23/2013

Policy:

Jersey Health Connect shall afford Patients a full scope of rights in accordance with HIPAA, HITECH and state law.

Procedure:

1) Access to Information by Patients

- a) Patients shall be afforded the right to Access their PHI in accordance with HIPAA, HITECH and other applicable laws governing patient “access rights” to medical records.
- b) Participant Response.
 - i) Each Participant shall be responsible for affording its own Patients the right to Access PHI maintained by such Participant its Designated Record Set in accordance with its own internal policies, HIPAA, HITECH and other applicable law.
 - ii) Each Participant shall be responsible for developing and maintaining a process through which Patients are able to request access to or copies of their PHI originating with such Participant.
 - iii) Participants shall be responsible for providing copies of PHI to a requesting Patient in a readable form and format, including electronic format(s) as applicable, when requested.
- c) JHC Response.
 - i) If a patient should submit a request for access to his/her information maintained in the JHC EHR, such request will be promptly forward to the appropriate Participant(s) for response.
 - ii) A patient who wishes to access to his/her information may establish a PHR account.

2) Accounting of Disclosures ⁱ

- a) Patients will be afforded the right to request and obtain an Accounting of Disclosures (AOD) as permitted and in accordance with HIPAA and HITECH.
- b) Participant Response. _

- i) Each Participant shall be responsible for affording its Patients the right to an AOD with regard to PHI maintained by such Participant in a Designated Record Set in accordance with its own internal policies, HIPAA, HITECH and other applicable law.
 - ii) Each Participant shall be responsible for developing and maintaining a process by which Patients are able to request an AOD from the data-originating Participant.
 - iii) Participants shall be responsible for providing an AOD to a requesting Patient in a readable form and format, including electronic formats, where appropriate.
 - iv) Participants shall be responsible for complying with any changes to the HIPAA AOD requirement at 45 C.F.R. § 164.528 as amended by HITECH and future rules and regulations, including but not limited to the provision of an Access Report to Patients for all accesses made to Participants' electronic designated record sets.
- c) JHC Response.
- i) If a patient should submit a request for an AOD to Jersey Health Connect, such request will be promptly forward to the appropriate Participant(s) for response.
 - ii) In its capacity as a HIPAA Business Associate, Jersey Health Connect will maintain appropriate records that would permit Participant to respond to a Patient's request for an AOD with regard to Data that JHC is maintaining on behalf of such Participant.
 - iii) Jersey Health Connect will provide to the requesting Participant, where necessary for a Participant to respond to a Patient's AOD request, an AOD "report" in a readable form and format, containing such information as may be required to respond to a Patient's AOD request in compliance with HIPAA and HITECH.
- 3) Amendment of Data
- a) Patients will be afforded the right to request an Amendment to their PHI as permitted and in accordance with HIPAA, HITECH, and applicable State law.
 - b) Participant Response.
 - i) Each Participant shall be responsible for affording its Patients the right to request an Amendment with regard to PHI maintained by such Participant in a Designated Record Set in accordance with its own internal policies, HIPAA, HITECH and other applicable law.
 - ii) If a Patient requests an Amendment, and a Participant accepts the same, the Participant shall make reasonable efforts inform other Participants who may

have accessed or relied upon the PHI to the potential detriment of the Patient. To accomplish the foregoing:

- (1) A Participant's EMR must support automatic transmission of accepted amendments or corrections to Jersey Health Connect or have the technological capability to manually "send" the correction to Jersey Health Connect.
 - (2) If a Participant's EMR cannot support automatic push of corrections to Jersey Health Connect or a manually-triggered push of corrections to Jersey Health Connection, the Participant shall notify Jersey Health Connect immediately.
- c) JHC Response. JHC shall monitor and consider implementing future technology that is capable of notifying Authorized Users that accessed and may have relied upon Data has been subsequently amended through a patient-initiated request for Amendment.
- 4) Requests for Restrictions
- a) Patients will be afforded the right to request a restriction on the uses and disclosures of PHI as permitted and in accordance with HIPAA, HITECH, and applicable State law.
 - b) Participants shall be responsible for complying with a Patient's requests to restrict disclosures made by the Participant to a health plan where the disclosure is solely for purposes of payment or health care operations and related solely to a health care item or service for which the Patient paid in full and out of pocket.
 - c) If pursuant to a patient's request, a Participant has agreed to Restrict certain uses or disclosures of such patient's information, then the Participant shall be responsible for preventing such patient's Restricted Data from being disclosed to or shared with JHC if such disclosure or sharing would violate the agreed-upon Restriction.
- 5) Authorizations, Consents and Approvals
- a) Participants shall be responsible for continuing to afford their Patients the right to consent to uses and disclosures of their PHI/Data as required by these JHC Policies, HIPAA, HITECH and other applicable federal and/or state laws. Participants shall be solely responsible for determining that Patient consents obtained, and subsequent use and disclosure of Patient PHI/Data, complies with all applicable federal and/or state laws.
 - b) Where a Patient's written Authorization is required to use and/or disclose PHI/Data through JHC, the Authorization Form used must comply with applicable federal and state laws, as well as include any specific language that may be required by JHC.

- c) Participants shall be responsible for developing Authorization Forms specific to the types of PHI/Data to be used and/or disclosed, licensing regulations Participant may be subject to, and any other federal or state laws and regulations unique to the respective Participants. Participants shall ensure that each Authorization Form obtained from a Patient complies with all applicable federal and state laws with regard to the specific PHI/Data being used or disclosed through JHC prior to such use or disclosure.
 - d) Where a Patient's "Approval" is needed but written authorization or informed consent is not specifically required by law, a Participant shall determine the methods for documentation that shall be sufficient for reflecting that such Approval was obtained. Examples include, but are not limited to, obtaining an Acknowledgment of receipt of a Participant's Notice of Privacy Practice which describe the manner in which a Patient's PHI may be used and disclosed, or a "checked box" in the Patient's Jersey Health Connect EHR reflecting an attestation that such Patient's Approval was obtained.
 - e) Participants shall ensure that such Patient Approvals are obtained in compliance with all applicable federal and state laws with regard to the specific PHI/Data being used or disclosed through JHC prior to such use or disclosure.
- 6) Patient PHR Rights
- a) Access Rights.
 - i) Patients shall be afforded the opportunity and choice to "opt-in" to establishing a PHR account in accordance with the JHC Policy "Patient Participation & Choice", as well as in accordance with JHC's selected PHR vendor's policies and procedures governing the manner in which a patient may establish a PHR with such vendor.
 - ii) Patients shall be required to sign online consent forms provided by Jersey Health Connect's PHR vendor.
 - iii) The identity of the Patient seeking to gain access to his/her PHR account shall be authenticated and validated.
 - iv) Jersey Health Connect shall cooperate with its PHR Vendor to establish procedures for validating and activating Patient PHR accounts.
 - v) Once established, Patients may access and control the content and consent preferences of their PHR in accordance with the PHR vendor's policies.
 - vi) Patients access to and control over information within their PHR does not equate to access and control over the Patient's information at its originating source.
 - b) Amendment.

- i) The Patient solely is responsible for control over his/her PHR account, and all amendments to Data in the PHR are made at the discretion of the Patient, not a Participant.
 - ii) Participants shall be responsible for developing reasonable and appropriate policies and procedures for responding to Patient requests to furnish amended Data maintained by Participant and which was previously released into the Patient's PHR.
 - iii) Participant shall not furnish amended Data released to a Patient PHR by another Participant or by the Patient him or herself unless such Amendment would be permitted by law. Participants shall direct Patients to the appropriate Participant(s) and/or the PHR Vendor for such Amendment requests.
- c) Authorizations, Consents and Approvals. Participants shall be responsible for obtaining any and all necessary consents and/or authorizations as required by federal and state law prior to disclosing any PHI into a Patient's PHR maintained by the third party PHR Vendor.
- d) Deactivation/Termination. Upon deactivation or termination of a Patient's PHR, the PHR vendor shall be responsible for using reasonable efforts to alert Patients and provide a reasonable amount of time for Patients to arrange for copies of or transfer of Data in their PHR prior to it being made inaccessible. The PHR Vendor shall be responsible informing Patients of the processes and consequences of PHR deactivation or termination.

Revision History:

3/12/2012 New Policy

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

¹ New Jersey Health Information Network (NJHIN) Security Policy and Procedure 3.4, "Audit." This policy and procedures requires NJHIOs to make available audit information upon request by Patients.