

## HEALTH INFORMATION EXCHANGE POLICIES

Policy: Patient Participation and Choice

Number: 5

Applicability: Provider, Exchanger

Effective: 9/23/2013

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## Policy:

Patients should understand how their information will be used through the Jersey Health Connect network and that they are given the right to “Opt-Out” of having their information in the JHC Electronic Health Record made available for access. Patients will also be made aware of the opportunity to activate their own individual *patient*-controlled PHR account.

## Procedure:

## 1) Automatic Inclusion

- a) Selected Data about a Patient that is contained in a connected Electronic Medical Record maintained by a registered Participant, or its registered Authorized Users, shall be automatically contributed to the patient’s Electronic Health Record maintained by Jersey Health Connect.
- b) “Including” Patient Data in the Jersey Health Connect EHR does not automatically permit access to such Data by Participants and Authorized Users.
- c) Patient Data maintained by Jersey Health Connect shall not be available for Access by any Participant or Authorized User unless such Access is Authorized and a Permissible Use, as set forth in these Jersey Health Connect HIE Policies.

## 2) HIE Educational Materials

- a) Participants shall provide Patients with educational information regarding Jersey Health Connect as well as the terms and conditions upon which their PHI/Data can be shared with other Participants and Authorized Users. To satisfy this policy of educating Patients, Participants shall be required to utilize the then-current Jersey Health Connect Brochure, or a substantially similar educational brochure approved by Jersey Health Connect, for dissemination to Patients (hereinafter, a “Brochure”).
- b) Participant shall be responsible for its own internal tracking of which of its Patients have or have not received a I Brochure in order to help reduce costs associated with printing the Brochures.
- c) Provision of the Brochure to each Patient must be accompanied by a verbal statement made to the Patient by the Registrar or other individual providing the educational information to the Patient with the following language, or such other

language as may be approved by JHC: “[Participant Name] is now a member of JHC, a health information exchange (HIE) network. The Brochure explains what is Jersey Health Connect and Health Information Exchange. Unless you Opt-Out of JHC, your clinical data will be included and made available to your other clinicians through an electronic health record maintained by JHC on behalf of JHC’s Participants. The Brochure gives you detailed information on how to Opt-Out. If you have any questions, you can call the number provided in the Brochure.”

- d) To facilitate Patients’ understanding regarding where their Data is being generated, stored and being made accessible for exchange, a list of Health Care Providers participating in Jersey Health Connect shall be made available through Jersey Health Connect’s website, a link to which shall also be placed on each Participating Health Care Provider’s website. Each Participant shall also be responsible for providing a hard copy of such list if requested by a Patient.
  - e) In addition to providing educational materials and information, Participants must ensure that their Notice of Privacy Practices is updated in accordance with the JHC Notice of Privacy Practices Policy and made available to Patients. Participants shall include language substantially similar to the language found in the then-current JHC Sample HIPAA NPP, and each Participant is responsible for any and all costs associated with printing, distributing and otherwise making available their own revised HIPAA NPP to Patients.
- 3) “Opt-Out” Choice
- a) All Patients who are treated by a Health Care Provider that is a Participant of Jersey Health Connect shall have the option and opportunity to choose to not have information about them shared through Jersey Health Connect.
  - b) Patients may exercise their right to be excluded from Jersey Health Connect’s data sharing by completing a “HIE Opt-Out” process as set forth below in Section E, or as may be reasonably determined and implemented from time to time by Jersey Health Connect.
    - i) Opt-Out through PHR Account. In the alternative, a patient may “Opt-Out” of having his/her information shared through the JHC EHR by claiming his/her PHR account and controlling his or her consent preferences as the owner of such PHR account. A Patient may register for a PHR Account directly with Jersey Health Connects selected PHR Vendor.
  - c) Granularity of Opt-Out Choices: Patients right to “Opt-Out” of shall be limited to those choices currently checked below:
    - i)  Excluded from HIE – certain information may remain in Jersey Health Connect, but such information about the Patient will **NOT** be accessible by any Participant or Authorized User. The “Opt-Out” choice shall result in a complete Opt-Out of Patient Data being shared through the Jersey Health

Connect EHR.

- ii)  By Participant - Patient's information will remain in Jersey Health Connect, but information created and maintained by a particular Health Care Provider that otherwise has a treatment relationship with the Patient and is a Participant and Authorized User of Jersey Health Connect will NOT be accessible by any other Participant.
  - iii)  By Date of Treatment – Patient's information will remain in Jersey Health Connect, however such information created and maintained by a particular Participant and Authorized User on specific date of treatment will NOT be accessible by any Participant and Authorized User.
  - iv)  By Type of Information – Patient's information will remain in Jersey Health Connect, but specific information identified by a Patient (e.g., HIV/AIDS) will NOT be accessible by any Participant and Authorized User.
- d) *Effect of Opt-Out.*
- i) After a Patient exercises his/her Opt-Out, such Patient's Data (including the Patient's name, if a complete Opt-Out is selected) shall no longer be accessible to non-ordering Health Care Providers through Jersey Health Connect's EHR.
  - ii) Procedures and mechanisms shall be implemented in order to effectively process a patient's opt-out request. Such procedures shall include at least the following:
    - (1) A Patient seeking to Opt-Out may sign the standard JHC "Opt-out" Form, which shall be made available through Participant's Registrar or similar department. The Registrar or similar department must make available copies of the "Opt-Out"/Revocation Forms to Patients at their request and at Participant's own cost.
    - (2) Opt-out in Person.
      - (a) Each Participant may, but is not required to, accept a signed "Opt-out" Form handed in-person to its Registrar or other similar Department by a Patient in order to facilitate a Patient opting-out of the JHC. If Opt-Out Forms will be accepted by Participant, the Registrar shall be responsible for reasonably authenticating the identity of each individual seeking to opt-out of the JHC and confirm the date on the form as the date the individual has handed the form in. The Registrar shall promptly log into the JHC-RH screen and flag the Patient as having opted-out of the JHC. At the end of each day, the Registrar shall fax any and all signed Opt-Out Forms collected for that day to JHC.
      - (b) If an Opt-Out form is submitted to a Participant, the Participant may direct the Patient to submit the form directly to Jersey Health Connect, per the instructions on the form. A Participant, however, is permitted,

but not obligated, to accept such Opt-Out directly from the Patient, but then shall be responsible for immediately (within 24 hours) forwarding such signed Opt-Out directly to Jersey Health Connect for processing.

- (3) Opt-out by Mail. Patients may mail a JHC “Opt-Out” Form directly to JHC at the attention of such individual/department designated by JHC for processing opt-outs and revocation of opt-outs. Such JHC individual/department shall be responsible for complying with the following procedures in accordance with the timeframes as set forth in JHC’s HIE Educational Brochure or Notice of Privacy Practices:
- (a) Placing the date of receipt of an signed “Opt-Out” Form on each form received;
  - (b) Confirming the individual’s current status in the JHC to confirm whether
    - (i) any record exists whereby an opt-out may be processed;
    - (ii) the Patient’s opt-out status has already been recorded; or
    - (iii) The Patient has claimed his or her PHR account.
  - (c) If opt-out is confirmed with the Patient, sending a Letter of Acknowledgement to the Patient. A copy of the letter shall be kept on file by JHC for a period of at least six (6) years;
  - (d) Manually indicating in the JHC Relay Health Record that the Patient has opted-out of the JHC.
- e) Revocation of Prior Opt-Out.
- i) A Patient who has chosen not to make his or her information available through Jersey Health Connect subsequently may be re-activated only if the individual rescinds his or her prior decision to Opt-Out, or subsequently chooses to renew participation in Jersey Health Connect.
  - ii) Appropriate procedures and mechanisms shall be implemented in order to effectuate a Patient’s rescission of a prior Opt-Out and allow the Patient’s information to become accessible through Jersey Health Connect. Such procedures shall include at least the following:
    - (1) Patient shall submit a written request to revoke their opt out with information sufficient to identify the individual.;
    - (2) If any such request is submitted to a Participant, the Participant may direct the Patient to submit the form directly to Jersey Health Connect, per the instructions on the form. A Participant, however, is permitted, but not obligated, to accept such Revocation of Prior Opt-Out directly from the Patient, but then shall be responsible for immediately (within 24 hours) forwarding such signed Opt-Out directly to Jersey Health Connect for processing.

- (3) Jersey Health Connect's procedures for processing Patients' Revocation of Prior Opt-Out requests shall include at a minimum:
    - (a) Revocations are processed within one (1) business day or the timeframes set forth in the JHC HIE Educational Brochure or the NPP, as the case may be;
    - (b) Documentation is maintained for at least six (6) years; and
    - (c) A confirmation is furnished to the Patient, either by mail or e-mail, indicating that their requested has been received and processed.
  - f) Participant and Authorized User's Procedures.
    - i) Jersey Health Connect shall establish reasonable and appropriate procedures in accordance with all JHC Policies in order to enable the exercise of a Patient's choice not to have his/or her PHI/Data accessed by or from Jersey Health Connect. In instances where the Patient wishes to exercise their option to Opt-Out or back in to another connected Health Information Organization (HIO), the procedures may include directing such Patient to a Participant in the particular HIO network.
    - ii) Each Participant shall remain responsible for knowing and determining whether, and if, additional Patient authorization or consent must be obtained prior to allowing access to Patient's Data through Jersey Health Connect. For example, if a law or regulation requires a Health Care Provider (e.g., a psychologist) to not permit disclosure of Data without *prior written consent*, then such Health Care Provider is solely responsible for obtaining such prior written consent or not participating in Jersey Health Connect in a manner that would cause a violation of such standard or law.
  - g) Provision of Coverage or Care. Participants and Authorized Users shall not withhold coverage or care from a Patient on the basis of that Patient's choice not to have information about him or her shared through Jersey Health Connect.
- 4) PHR Accounts.
- a) Patients will be afforded the opportunity to claim and activate their own PHR account offered through JHC's selected PHR Vendor. Patients *will not* automatically have their PHR account activated.
  - b) PHR Education Materials. Patients should be educated on the benefits of activating their own PHR account. A PHR Educational Brochure or similar educational materials may be used for this purpose. In addition, information regarding the PHR may be made available on the Jersey Health Connect website, including information regarding the PHR Vendor. Participants must ensure that their NPP address disclosures of information to Patient PHRs, as applicable.
  - c) Authentication and Authorizations.

- i) No PHR Account shall be activated until the identity of the Patient to be linked to such account has been *verified*. The PHR Vendor and Participant's Registrar shall be responsible for establishing and authenticating the identity of the Patient by examining appropriate proof of identity, including but not limited to the Patient's driver's license or other state-issued ID, passport, government ID and other reasonable proofs of identity.
  - ii) Each Participant is responsible for obtaining any additional written Authorization or other documentation from the Patient, as it reasonably determined to be necessary under federal and state law, before releasing any information to the Patient's PHR activated account.
- d) Effect of Activation of the PHR Account.
- i) The PHR Vendor shall be responsible for establishing reasonable and appropriate verification procedures that allow an individual to activate their PHR Account online. Such authentication and access credentials shall be consistent with the JHC Policies "Authorization and Access" and "Authentication."
  - ii) After a Patient exercises his/her choice to activate his/her PHR account, Data shall be transmitted to the PHR in accordance with the Patient's consent preferences managed by the PHR Vendor.
  - iii) The process for activating a PHR Account shall ensure that the PHR Vendor's consent process and disclaimers cover disclosure of information originating from a Participant.
- e) The PHR Vendor shall maintain the privacy and security of the Data that resides in the Patient's activated PHR Account

Revision History:

3/12/2012 New Policy

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