

# Idaho Health Data Exchange Privacy Policies

## INTRODUCTION

These Privacy Policies apply to the access, use and disclosure of protected health information by Participants through the Idaho Health Data Exchange. These policies will be reviewed and revised as needed based on changes to State or Federal law or regulations.

The IHDE Privacy Policies are based on the Model Privacy Policies and Procedures for Health Information Exchange developed by **The Connecting for Health Common Framework**. Connecting for Health is a public-private collaborative with representatives from more than 100 organizations across the spectrum of health care stakeholders. Its purpose is to catalyze the widespread changes necessary to realize the full benefits of health information technology (HIT), while protecting patient privacy and the security of personal health information.

These Policies combined with the privacy policies and procedures already established and implemented by Participants as covered entities under HIPAA, form a comprehensive array of administrative safeguards addressing privacy of protected health information.

The goal is to promote a balance between consumer control of and access to health information with the need of participating Covered Entities to access that information to ensure the quality and coordination of care..

## STATUS OF IHDE AND PARTICIPANTS

Participants –those which provide data to the IHDE and those which obtain and use data from the IHDE – are either health care providers, or health plans. All Participants are covered entities under HIPAA.

IHDE is a business associate ("BA") of the Participants. IHDE accepts and agrees to follow terms applicable to the privacy of protected health information by virtue of its business associate agreement with each Participant and these privacy policies.

## EFFECT OF LEGISLATION AND RULE CHANGES

IHDE and Participants need to remain flexible in approach in order to adapt to the uncertainty of state and federal legislation and regulations that will affect design, safeguards, rights and responsibilities over time. This shall include monitoring and implementing design components and safeguards mandated in the Health Information Technology for Economic and Clinical Health Act or "HITECH" as enacted in P.L 111-5 and regulations to be issued there under. IHDE recognizes that it will be bound by the new Privacy Section D requirements of HITECH that requires health exchange business associates to follow all of the same Covered Entity requirements contained in the HIPAA Privacy Rule, beginning February 2010.

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## **Scope and Availability**

These policies apply to all Participants who have registered with and are participating in the Idaho Health Data Exchange (IHDE).

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## A. Definitions

**Authorization.** “Authorization” shall mean permission from the patient to use or disclose protected health information required when the use or disclosure is not permitted under HIPAA.

**Covered Entity.** “Covered Entity” shall have the same meaning as the term “Covered Entity” in 45 CFR 160.103.

**Health Care Provider.** “Health Care Provider” shall mean any individual, institution, or agency that provides health services to health care consumers

**HIPAA.** “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996 and the HIPAA regulations promulgated at 45 CFR (Code of Federal Regulations) Parts 160 and 164.

**Idaho Health Data Exchange (IHDE).** “Idaho Health Data Exchange (IHDE)” shall mean the secure electronic Health Information Network for the State of Idaho.

**Organization.** “Organization” shall mean any individual or group of individuals registered with and participating in the IHDE that may provide, make available, or request PHI through the IHDE.

**Participant.** “Participant” shall mean all of the members within the networked environment of the Idaho Health Data Exchange including health care institutions, clinics, providers, labs, pharmacy services, and health plans that have current Participation Agreements with the IHDE.

**Protected Health Information (PHI).** “Protected Health Information” shall have the same meaning as the term “Protected Health Information” in 45 C.F.R. § 160.103 and 164.501.

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## **B. Compliance with Law and Policy**

### **Purpose**

This Policy stipulates compliance with all applicable laws and IHDE policies.

### **POLICY:**

1. **Laws.** Each Participant shall, at all times, comply with all applicable federal, state, and local laws and regulations, including, but not limited to, those protecting the confidentiality and security of individually identifiable health information and establishing certain individual privacy rights.
2. **IHDE Policies.** Each Participant shall, at all times, comply with all applicable IHDE policies and procedures (“IHDE Policies”). These IHDE Policies may be revised and updated from time to time. IHDE will notify Participants when these Policies are revised and provide access to electronic copies of the revised policies. Each Participant is responsible for ensuring it has, and is in compliance with, the most recent version of these IHDE Policies.
3. **Participant Policies.** Each Participant is responsible for ensuring that it has the requisite, appropriate, and necessary internal policies for compliance with applicable laws and these IHDE Policies. In the event of a conflict between these IHDE Policies and an organization’s own policies and procedures, the Participant shall comply with the Policy that is more protective of individual privacy and security.

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## C. Notice of Privacy Practices

### **Purpose**

This Policy relates to the maintenance of privacy notices.

### **POLICY:**

Each Participant shall develop and maintain a notice of privacy practices (the Notice) that complies with applicable law and this Policy.

1. **Content.** The Notice shall meet the content requirements set forth under the HIPAA Privacy Rule and comply with all applicable laws and regulations. For Participants that are also health care providers, the Notice shall inform patients that their health information will be sent to the Idaho Health Data Exchange. The notice will also advise patients to the right to restrict disclosure of health information through the IHDE.
2. **Provision to Individuals.** Each Participant shall have its own policies and procedures governing distribution of the Notice to individuals, which shall be consistent with this Policy and comply with applicable laws and regulations.

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## D. Individual Participation and Control of Information

### **Purpose**

This Policy addresses an individual's choice to restrict information after it is sent to the IHDE.

### **POLICY:**

1. **Choice to Restrict Future Disclosures.** Every patient has the right to limit Participants' access to health information about him or her after the information is delivered to the IHDE. Unless an individual completes the process to limit Participants' access to information about the individual through the IHDE, the information on that individual will be made accessible to Participants through the IHDE.
2. **Request to Restrict Notification.** Participants shall establish reasonable and appropriate processes to enable the exercise of the individual's choice not to have information about him or her made accessible to Participants through the IHDE. The methods described in this Policy are not exclusive, and Participants may adopt additional, not inconsistent, processes.
3. **Submission of a Request to Restrict Access.** An individual choosing to restrict Participants' access to his or her IHDE information must submit a request to restrict information directly to the IHDE.
4. **Effect of Choice.** The IHDE shall implement appropriate mechanisms to securely prevent access to clinical information about an individual when requested to do so. A decision to restrict access only affects the availability of the individual's protected health information through the IHDE. A Participant who queries on an individual who has requested a restriction will see only the name, date of birth and gender of the individual along with a notification that the individual has requested his or her information not be shared through the IHDE.

A request for a restriction affects all Participants' future access to the individual's information not just with respect to a particular Participant or episode of care.

In the IHDE system, the consent status of an individual who has restricted access to his or her medical information will be set to "No".

5. **Revocation.** An individual may revoke a prior election to restrict data at a later date. No information regarding an individual who has requested the IHDE not share information with Participants shall be made accessible through the IHDE unless or until the individual revokes his or her decision. The request to rescind the choice and have the IHDE transmit information must be submitted to the IHDE in writing and the signature of the individual must be notarized. Information on the individual can be made accessible in

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the IHDE effective the date he or she requests to revoke the restriction.

Withdrawing a restriction will result in information that was previously unavailable through the IHDE becoming available to all IHDE Participants.

6. **Documentation.** The IHDE must maintain the documentation for all individuals choosing not to have information about them accessed through the IHDE.

Once a restriction request has been processed, an acknowledgement letter will be sent to the individual confirming receipt of and action on the request.

Once a request to revoke a restriction has been processed, an acknowledgement letter will be sent to the individual confirming receipt of and action on the request.

Documentation of all requests and acknowledgement letters must be retained for six (6) years.

7. **Provision of Coverage or Care.** A Participant shall not withhold coverage or care from an individual on the basis of that individual's choice not to have information about him or her accessible through the IHDE.

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## E. Uses and Disclosures of Health Information

### **Purpose**

This Policy addresses limitations on the use of information, accountability, and oversight.

### **POLICY:**

1. **Compliance with Law.** All disclosures of health information through the IHDE and the use of information obtained from the IHDE shall be consistent with all applicable federal, state, and local laws and shall not be used for any unlawful discriminatory purpose.
2. **Purposes.** Uses and disclosures of health information through the IHDE shall be for the purpose of treatment, coordination of care and health care operations, as permitted by applicable laws and regulations. Information contained in the Idaho Health Data Exchange shall not be used for setting rates or premium amounts. Each Participant shall provide or request health information through the IHDE only to the extent necessary via Participant security profiles and only for those purposes that are permitted by applicable federal, state, and local laws and regulations and these Policies. Information shall not be requested for marketing or marketing related purposes. Under no circumstances shall information be requested for a discriminatory purpose. In the absence of a permissible purpose, a Participant shall not request information through the IHDE.
3. **IHDE Policies.** Participant uses and disclosures of and requests for health information via the IHDE shall comply with all IHDE Policies, including, but not limited to, the IHDE Policy on Minimum Necessary and the IHDE Policy on Information Subject to Special Protection.
4. **Participant Policies.** Each Participant shall refer to and comply with its own internal policies and procedures regarding disclosures of health information and the conditions that shall be met and documentation that shall be obtained, if any, prior to making such disclosures.
5. **Access Logs.** The IHDE shall maintain an access log. The access log is a list of all individual files requested from the IHDE. The access log will be used to conduct monthly audits. Participants will be provided the results of these audits. The access log will be monitored each month for inappropriate access. When inappropriate access is identified, reported or suspected, the incident will be investigated.
6. **Authentication.** Each Participant shall follow uniform minimum authentication requirements as specified in the IHDE Security Safeguards Policy for verifying and authenticating those within their organizations who shall have access to, as well as other Participants who request access to, information through the IHDE.

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## F. Information Subject to Special Protection

### **Purpose**

This Policy facilitates individualized privacy protections by requiring Participants to heed special protections of certain information set forth by applicable law.

### **POLICY:**

1. **Authorization Required.** Certain health information may be subject to special protection under federal, state, and/or local laws and regulations (e.g., substance abuse, mental health, and HIV). Each Participant is responsible for complying with such laws and regulations. A minimum common list of special protection orders/results/codes/diagnosis codes, etc. will be identified for uniform use across IHDE. Participants are free to further restrict special protection health information as they desire.

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## G. Minimum Necessary

### **Purpose**

This Policy incorporates the HIPAA privacy rule requirements that entities shall disclose only the amount of information reasonably necessary to achieve a particular purpose.

### **POLICY:**

1. **Uses.** Each Participant shall access through IHDE only the minimum amount of health information necessary for the purpose of such use. Access to health information obtained through IHDE shall be limited to workforce members, agents, and contractors who need the information to perform their job function or duties.
2. **Requests.** Each Participant shall request only the minimum amount of health information through IHDE as is necessary for the intended purpose of the request.
3. **Entire IHDE Medical Information.** A Participant shall not use, disclose, or request an individual's entire IHDE medical information except where specifically justified as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure, or request. This limit does not apply to disclosures required by law.

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## H. Workforce, Agents and Contractors

### **Purpose**

This Policy addresses legitimate use of health information, proper implementation of Participants' privacy practices, prompt identification of privacy violations and the undertaking of remedial action for those violations.

### **POLICY:**

1. **System Access.** Each Participant shall request access to the IHDE for only those workforce members, agents, and contractors who have a legitimate business need to use the IHDE to release or obtain information. Prior to being granted access to the IHDE, any workforce member, agent, or contractor must be trained on IHDE policies.

Participants must adhere to the Security Safeguards Policy for IHDE and maintain appropriate administrative, technical, and physical safeguards to prevent any unauthorized use or disclosure of PHI pursuant to HIPAA standards.

2. **Training.** Each Participant shall ensure its workforce members, agents, and contractors who will have access to the IHDE are provided training on these Policies. Each trainee must sign an acknowledgement that he or she has received, read, and understands these Policies. These acknowledgement forms must be retained by the Participant.
3. **Discipline for Non-Compliance.** Each Participant shall implement its own procedures to hold workforce members, agents, and contractors accountable for ensuring that they do not use, disclose, or request health information except as permitted by these Policies and they comply with, but are not limited to these Policies. Such procedures shall also include disciplinary measures for non-compliance with these Policies. Such disciplinary measures may include verbal or written warnings, fines, demotion, or termination. The IHDE reserves the right to terminate Participant user access based on non-compliance with IHDE Policies.
4. **Reporting of Non-Compliance.** Each Participant shall have a mechanism for reporting any non-compliance with these Policies, and shall require all workforce members, agents, and contractors to report any non-compliance with these Policies to the Participant. Participants shall also investigate and take appropriate corrective action on any internally reported non-compliance with these Policies. Participants shall notify IHDE regarding instances of significant non-compliance. **This topic needs further discussion per annotations from SARMC/SLRMC from 5/09**
5. **Follow up On Audit Findings.** Each Participant shall follow up on IHDE audit findings of alleged inappropriate use. Each participant must have a corrective action process in place for handling any non-compliance with these

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Policies by its workforce members, agents, and contractors. **Additional elucidation on audit process needed.**

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## I. Amendment of Data

### **Purpose**

This Policy integrates the rights of individuals to request access to or an amendment of health information about them under certain circumstances granted by HIPAA Privacy Rule.

### **POLICY:**

- 1. Amendment.** Each Participant shall comply with applicable federal, state and local laws and regulations regarding individual rights to request amendment of health information. When a Participant accepts a request for an amendment of health information, the Participant shall contact IHDE to request a list of Participants who have accessed that data and the contact information for those Participants and notify those Participants within a reasonable time, if the recipient organization may have relied or could expect to rely on the information to the detriment of the individual. (Per the comments from IHDE to questions from Als/Lukes in the previous version, I think we may want to talk about this process)

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## J. Mitigation

### **Purpose**

This Policy applies to all organizations that are registered with and are participating in the IHDE and that may provide, make available, or request PHI through the IHDE.

### **POLICY:**

1. **Participant Responsibility.** The Participant is responsible to mitigate any breach or improper disclosure of PHI committed by the Participant, or its workforce members, agents, and contractors at the Participant's office in accordance with laws, rules, regulations, or guidelines established by state or federal regulations.
2. **IHDE Responsibility.** IHDE is responsible to mitigate any unsecured (unencrypted) breach or improper disclosure of PHI committed by IHDE, its workforce members, agents, contractors and vendors in accordance with laws, rules, regulations, or guidelines established by state or federal regulations.
3. **IHDE Process.** IHDE will develop a process to mitigate a breach or improper disclosure, etc. Mitigation includes appropriate remedial action to limit to the extent practicable, any harmful effect of the breach, failure or improper disclosure - which may include a request to the party who received such information to return and/or destroy the impermissibly disclosed information. IHDE must also provide the particulars of an unsecured (unencrypted) PHI breach as well as a comprehensive list of all the individuals whose information was breached or suspected of being breached to the Participant(s) involved. The Participant(s) are then responsible to provide notification to the individual(s) of the disclosure of information about them and to follow all other state or federal regulations applicable to such breach or incident.