

Idaho Health Data Exchange Privacy Policy

INTRODUCTION

The Idaho Health Data Exchange (IHDE) Privacy Policy applies to the access, use and disclosure of protected health information by Participants through the Idaho Health Data Exchange. This Policy will be reviewed and revised as needed based on changes to State or Federal law or regulations.

The IHDE Privacy Policy is based on the Model Privacy Policy 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.

This Policy, combined with the privacy policy 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 of this Policy 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” – are those which provide data to IHDE and those which obtain, and use, data from IHDE – they 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 its Business Associate Agreement (BAA) with each Participant and this Privacy Policy.

EFFECT OF LEGISLATION AND RULE CHANGES

IHDE and the Participants need to remain flexible in approach 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 the same Covered Entity requirements contained in the HIPAA Privacy Rule, beginning February 2010.

Idaho Health Data Exchange Privacy Policy

Scope and Availability

This Policy applies to all Participants who have registered with and are participating in the Idaho Health Data Exchange (IHDE).

Idaho Health Data Exchange Privacy Policy

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, 162, 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 a member within the networked environment of Idaho Health Data Exchange including healthcare institutions, clinics, providers, labs and payers, 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.

Idaho Health Data Exchange Privacy Policy

B. Compliance with Law and Policy

Purpose

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

POLICY:

1. **Laws.** Each Participant shall, always, 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 Policy.** Each Participant shall, always, comply with all applicable IHDE policy and procedures outlined in the IHDE Privacy Policy and the IHDE Program Manual. These IHDE policies may be revised and updated from time to time. IHDE will notify Participants when this policy is revised and provide access to electronic copies of the revised policy. Each Participant is responsible for ensuring it has, and is in compliance with, the most recent version of these IHDE policies.
3. **Participant Policy.** 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 any IHDE Policy and an organization's own policy and procedures, the Participant shall comply with the IHDE policy that is more protective of individual privacy and security.

Idaho Health Data Exchange Privacy Policy

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 Privacy 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 and provide data to IHDE, 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 IHDE.
2. **Provision to Individuals.** Each Participant shall have its own policy and procedures governing distribution of the Notice to individuals, which shall be consistent with this Privacy Policy and comply with applicable laws and regulations.

Idaho Health Data Exchange Privacy Policy

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 IHDE. Unless an individual completes the process to limit Participants' access to information about the individual through IHDE, the information on that individual will be made accessible to Participants through 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 IHDE. The methods described in this Policy are not exclusive, and Participants may adopt additional, but 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 IHDE.
4. **Effect of Choice.** 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 IHDE. A Participant who queries an individual who has requested a restriction will see only the name and date of birth of the individual along with a notification that the individual has "opted out" of sharing his or her information in IHDE.

A request for a restriction affects all Participants' future access to the individual's information not just with respect to a 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 "Opt Out".

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 IHDE unless or until the individual revokes his or her decision. The request to rescind the choice and have IHDE transmit information must be submitted to IHDE in writing and the signature of the individual must be notarized. Information on the individual can be made accessible in IHDE, effective the date he or she requests to revoke the restriction.

Idaho Health Data Exchange Privacy Policy

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

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

Idaho Health Data Exchange Privacy Policy

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 IHDE and the use of information obtained from 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 IHDE shall be for the purpose of treatment, payment 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 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 this Privacy Policy. 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 IHDE.
3. **IHDE Policy.** Participant uses and disclosures of and requests for health information via IHDE shall comply with all IHDE policies, including, the IHDE Policy on Minimum Necessary, Section G of this Privacy Policy and IHDE Policy on Information Subject to Special Protection, Section F of this Privacy Policy.
4. **Participant Policy.** Each Participant shall refer to and comply with its own internal Policy 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.** IHDE shall maintain an access log. The access log is a list of all individual files requested from IHDE. The access log will be used to conduct monthly audits. Participants will be provided the results of these audits upon request. The access log can be monitored each month for inappropriate access. If 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

Idaho Health Data Exchange Privacy Policy
IHDE.

Idaho Health Data Exchange Privacy Policy

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 and mental health). 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.

Idaho Health Data Exchange Privacy Policy

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.

Idaho Health Data Exchange Privacy Policy

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 IHDE for only those workforce members, agents, and contractors who have a legitimate business need to use IHDE to release or obtain information. Prior to being granted access to IHDE, any workforce member, agent, or contractor must be trained on IHDE Policy.

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 IHDE are provided training on this Policy. Each trainee must confirm an acknowledgement that he or she has received, read, and understands this Policy. These acknowledgements must be retained by IHDE.
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 this Policy and they comply with, but are not limited to this Policy. Such procedures shall also include disciplinary measures for non-compliance with this Policy. 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 Policy.
4. **Reporting of Non-Compliance.** Each Participant shall have a mechanism for reporting any non-compliance with this Policy, and shall require all workforce members, agents, and contractors to report any non-compliance with this Policy to the Participant. Participants shall also investigate and take appropriate corrective action on any internally reported non-compliance with this Policy. Participants shall notify IHDE regarding instances of significant non-compliance.
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 This Policy by its workforce members, agents, and contractors.

Idaho Health Data Exchange Privacy Policy

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.

Idaho Health Data Exchange Privacy Policy

J. Mitigation

Purpose

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