

Resolution Number 2014-15
Resolution Regarding Modification to Certain Privacy and Security Policies of the
Illinois Health Information Exchange Authority

WHEREAS, the Data Security and Privacy Committee of the Illinois Health Information Exchange Authority Board (DSPC) has submitted for the Board's consideration its Recommendation for Modifications of the Illinois Health Information Exchange Authority Privacy and Security Policies and Procedures (DSPC Recommendation) which are attached hereto as Exhibit A; and

WHEREAS, the Board has reviewed, and endorses the DSPC Recommendation; and

WHEREAS, the Board wishes to direct the Authority's Executive Director to take further action to implement the DSPC Recommendation;

BE IT RESOLVED BY THE ILLINOIS HEALTH INFORMATION EXCHANGE AUTHORITY, AS FOLLOWS:

Section 1. Authority. This resolution is adopted pursuant to Section 15(e) of the Illinois Health Information Exchange and Technology Act, 20 Illinois Compiled Statutes 3860/1 et seq.

Section 2. Adoption of the DSPC Recommendation;

RESOLVED, the Board hereby adopts the DSPC Recommendations;

RESOLVED, the Board hereby directs Raul Recarey, as Executive Director of the Authority, to take any and all necessary steps to implement the DSPC Recommendation, including as listed below:

Finalize, including by implementing non-substantive modifications and clarifications, revised Policies 6, 7, and the Definitions;

Revise all ILHIE Authority Policies and Procedures so that the compliance with the Policies and Procedures is required for use of ILHIE Direct;

Revise Policy 21 to clarify compliance with HIPAA;

As needed, convene focus groups to review ILHIE forms and notice and revise those forms to reflect the policy changes and any focus group recommendations; and

Post the revised Policies, Forms and ILHIE Notice to the ILHIE Authority's website and otherwise make the revised documentation available to Participants and the public.



Section 3. Enactment. This resolution shall take effect immediately. If any section, paragraph or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this resolution.

Adopted this 12th day of November, 2014, by a majority vote of the appointed members as follows:

Ayes:

Nays:

Abstain:

Absent:

Kerri McBride
Secretary

Exhibit A

To: Illinois Health Information Exchange Authority Board

From: Illinois Health Information Exchange Authority Board Data Security and Privacy Committee

Date: November 5, 2014

RE: Recommendation for Modification to the Illinois Health Information Exchange Authority Policies and Procedures

Since the initial approval of the ILHIE Authority Privacy and Security Policies and Procedures in November 2013 and April 2014, there have been changes in Illinois law. On August 25, 2014, Governor Quinn signed PA 98-1046, effective on January 1, 2015. PA 98-1046 amends the AIDS Confidentiality Act and the Genetic Information Privacy Act (Acts) to allow for, among other things, sharing of the Protected Health Information covered by those Acts through an HIE without separate consent. In addition, ILHIE Authority staff had received feedback from early participants in the ILHIE regarding workflow concerns stemming from compliance with the Policies. There was also a determination by ILHIE Authority staff that these Policies and Procedures, if relevant, must also apply to ILHIE Direct, the ILHIE Authority's Direct secure messaging service. Finally, a review of the Policies identified the need for a clarification to Policy Number 21, Breach Notification and Mitigation, to conform the policy to the requirements of the Health Insurance Portability and Accountability Act and its enabling regulations (HIPAA).

The Data Security and Privacy Committee (DSPC) met on November 5, 2014 to discuss the changes recommended by ILHIE Authority staff. Stakeholders that had been involved in the relevant policy development were also invited to comment on the changes to Policy 6, Patient Choice and Meaningful Disclosure, Policy Number 7, Information Subject to Special Protection, and Definitions. Several stakeholders attended the DSPC meeting, including, representatives from the ACLU, MCHIE, The Alliance of Chicago, and several ILHIE participants. Written comments were received from MCHIE, CIHIE, Southern Illinois Healthcare, ACLU, the AIDS Legal Council of Chicago, the AIDS Foundation of Chicago, Loyola University Health System, and The Health Conservancy.

The stakeholders and DSPC members in attendance reviewed each of the proposed policy modifications and based on the discussion additional modifications were recommended. With regard to Policy 6, there was an extended discussion on the issue of minors 12 years and older being allowed to elect to participate or not participate in the HIE. MCHIE indicated that some of its provider participants had expressed concerns about allowing a minor to consent to share his or her records in all circumstances and would prefer to have the minor's parent or guardian to consent in all situations, except where minor consent to confidential treatment was required by law. However, it was also expressed by a representative of the ACLU that requiring a parent or guardian to consent for patients 17 and under may expose to a parent or guardian a minor's confidential information about treatment to which the minor patient can self-consent under the law. While the language was modified in other ways to more clearly state the responsibilities of Participants, the choice of participation in the ILHIE for minors 12 years and older will remain solely with the minor.

Other changes to the language in Policies 6, 7 and the Definitions were primarily related to the amendments made by PA 98-1046. A copy of Policies 6, 7, and the Definitions are attached and show the revisions to the policies.

Related to the changes above, the ILHIE Authority Opt-Out, Opt-In, Notice forms and web content will need to be updated. As part of that update, ILHIE Authority staff recommended that they be authorized to convene focus groups throughout the State to review the language and make changes to make the forms easier to read and understand for the typical patient.

ILHIE Authority Staff recommended that the ILHIE Policies and Procedures as a whole be updated to reflect, as appropriate, that the compliance with the Policies and Procedures is required for use of ILHIE Direct, the Authority's Direct secure messaging service.

The ILHIE Authority staff also recommended that Policy 21, Breach Notification and Mitigation be modified to make certain that the ILHIE Authority comply with HIPAA in reporting unsuccessful security incidents.

DSPC Recommendation

After reviewing and discussion, the DSPC voted to recommend all the changes to the Policies and Procedures to the Board, as modified by the group during the discussion. In addition, it recommended that the ILHIE Authority staff be authorized to convene several focus groups throughout the State to review the language and make changes to make the forms easier to read and understand for the typical patient.



Policies and Procedures
POLICY: Patient Choice and Meaningful Disclosure
Policy #6
Effective Date: November 7, 2013 November 7, 2015

Background and Purpose: The ILHIE Authority is committed to protecting and respecting the privacy of Individual's Protected Health Information. As part of its mission, the ILHIE Authority is statutorily required to create rules, standards, or contractual obligations that provide each Individual whose Protected Health Information ~~are~~ **is** accessible through ILHIE Connect to have the option to opt out, opt in and revoke a prior decision to opt out or opt in. These rules, standards, or contractual obligations shall require written notice of an Individual's right to opt-out which directs the Individual to an HIE website. The Individual shall be provided meaningful disclosure regarding health information exchange (740 ILCS 14/9.6).

In accordance with the statutory requirements above, this policy describes how the participation decisions of Individuals to opt out of or to opt in to the ILHIE Authority's ILHIE Connect may be meaningfully exercised at the point of care. The policy also describes how an Individual may subsequently change these participation decisions. As used in this Policy and Procedure, "Participant" may additionally mean the Participant's Authorized User, as appropriate.

Terms used in this policy, but not otherwise defined in these Policies and Procedures, shall have the same meaning as set forth in HIPAA.

Policy:

1.0 Patient Choice. The ILHIE Authority will offer all Individuals a meaningful and informed way to decide whether to opt out of participation in ILHIE Connect. This Individual participation process will be governed by an opt-out policy and administered by each Participant at the point of care. Each Participant governs only the Protected Health Information held by that Participant. All Individuals that are patients of a Participant will be automatically enrolled in ILHIE Connect unless and until the Individual opts out in accordance with the procedures set forth herein. ~~and~~ ~~and~~ ~~No~~ affirmative action will need to be taken by Individuals to establish his or her participation, unless an Individual's medical record contains categories of Specially Protected Health Information requiring specific written Individual consent for disclosure under Applicable Law. ~~An Individual who is onboarded as opted in will be included in ILHIE Connect unless and until the Individual affirmatively opts out in accordance with the procedures set forth herein.~~

2.0 Meaningful Disclosure. To ensure that an Individual is able to make meaningful and informed choices about his or her participation in ILHIE Connect, each Individual will be offered the ILHIE Notice at the point of care at each Individual's first encounter with a Participant after it contracts to become a Participant. Each Individual will also be offered the ILHIE Notice at the point of care at each Individual's first encounter with a Participant for HIV-related care or and first encounter with a Participant for genetic testing. ~~or, i~~ In the event of a medical

emergency that makes it impossible to offer the ILHIE Notice to the Individual at ~~the~~ any such first encounter, as the ILHIE Notice will be offered as soon thereafter as is practicable, and then to Active Patients on an annual basis thereafter.

3.0 ILHIE Connect Participation. If an Individual's ~~is opted in to~~ Protected Health Information is available for disclosure through ILHIE Connect, that Individual's Protected Health Information ~~his or her health information~~ will be disclosed in response to a ~~specific~~ request, made by a Participant for a Permitted Purpose. These disclosures may include a notification of treatment or payment, or a summary of Protected Health Information related to treatment or payment as well as disclosures related to health care operations as allowed by Applicable Law. However, an Individual's Protected Health Information will not be disclosed in response to such a request when it contains Specially Protected Health Information unless necessary consent ~~authorizing that Participant~~ to disclose such Specially Protected Health Information, including through ILHIE Connect has been given by the Individual to the Participant that holds such data.

3.1 An Individual who does not want his or her health information to be disclosed to ~~other~~ Other Participants may opt out by following the procedures below. If an Individual does opt out, the Individual's Protected Health Information will not be disclosed through ~~the~~ ILHIE Connect for any purpose except as required or permitted by Applicable Law.

3.2 An Individual may decide at any time to change his or her preference to opt out or opt in to ILHIE Connect, including the revocation of a prior election to opt out of participation in ILHIE Connect.

3.3 An Individual's ILHIE Connect participation is specific to each Participant that maintains Protected Health Information about that Individual. An Individual who desires to opt out of ILHIE Connect participation on a State-wide basis must:

- i) Submit an Opt-Out Form ~~opt-out with to~~ each Participant that maintains Protected Health Information about that Individual; or, ~~health care providers who are Participants.~~
- ii) Submit an Opt-Out Form to the ILHIE Authority for each ~~current~~ Participant that maintains Protected Health Information about ~~such~~ the Individual. The ILHIE Authority may only opt an Individual out with respect to a health care provider that is a current Participant. If an Individual submits an Opt Out Form to or regarding a health care provider that is not a current Participant, the Opt Out Form will not serve to opt the Individual out of ILHIE with regard to that provider even if the provider becomes a Participant at a later point in time. A patient may submit an Opt-Out Form to a Participant that has not yet onboarded patient demographic information; however, Participant will not transmit the Opt-Out Form to the ILHIE Authority, and the opt-out will not become effective, ~~until the Participant,~~ until the Participant has onboarded the patient demographic information. ~~Alternatively, a~~ An Individual can choose to opt out with some, and not all, Participants

that maintain Protected Health Information about the Individual, participate in ILHIE Connect on a Participant-by-Participant basis.

4.0 Compliance. Participants shall comply with these Policies and Procedures. The ILHIE Authority will monitor and enforce compliance with and adherence to these Policies and Procedures.

4.1 Participant shall cooperate with the ILHIE Authority in its monitoring and enforcement of the Participant's compliance with these Policies and Procedures.

Procedures

Patient and Participant Procedures

1.0 After a Participant contracts to join ILHIE Connect, that Participant must present the ILHIE Notice (i) at the point of care to each Individual at the Individual's first encounter with that Participant, or, in the event of a medical emergency that makes it impossible to offer the ILHIE Notice to the Individual at the first encounter, as soon thereafter as is practicable; (ii) to each Individual will also be offered the ILHIE Notice at the point of care at each Individual's first encounter with a Participant for HIV-related care or and first encounter with a Participant for genetic testing; and (iii) to each Active Patient, on an annual basis thereafter. In the sole discretion of the Participant, the Participant may offer the ILHIE Notice to an Individual by any reasonably appropriate means, including but not limited to by mail, email, or Individual portal. Participants are encouraged to post a copy of the ILHIE Notice on the Participant's own website, if any, and to record the presentation of the ILHIE Notice in the Individual's medical record.

2.0 The Participant must prominently and consistently display the ILHIE Signage.

3.0 The Participant may display and make available any other materials about ILHIE Connect that are developed, approved and made freely available by the ILHIE Authority to Participants in a public area of the Participant's office or facility, on the Participant's website, or both.

4.0 Participant may amend its current Notice of Privacy Practices ("NPP") to reflect its contemplated requests, uses, and disclosure of Protected Health Information through the ILHIE; however, amendment of a Participant's NPP will not satisfy ILHIE meaningful disclosure requirements. The ILHIE Notice is separate and apart from any requirements the Participant is obligated to comply with pursuant to HIPAA or the Participant's HIPAA NPP.

5.0 If an Individual asks questions about ILHIE Connect, the Participant or Participant's designee (e.g. HIPAA Privacy Officer) will respond to the Individual, including responding to questions about the contents of the ILHIE Notice, including the potential benefits and risks of participation in ILHIE Connect.

6.0 No action is needed by an Individual who is a patient of a Participant if that Individual wishes to participate in ILHIE Connect and the Individual does not have Specially Protected Health Information in his or her medical record. An Individual shall participate in ILHIE Connect unless and until the Individual ~~elects not to participate~~ opts out through proper completion of the Opt-Out Form. If the Individual does not want to ~~share~~ disclose his or her Protected Health Information held by a specific Participant, an Individual must:

- ~~i)~~ i) Submit an Opt-Out Form to each such Participant whose data that maintains Protected Health Information about the Individual that the Individual does not wish to have shared or disclose or
- ~~ii)~~ ii) Submit an Opt-Out Form to the ILHIE Authority for each Participant that maintains Protected Health Information about the Individual that the Individual does not want to disclose. The ILHIE Authority may only opt an Individual out with respect to a health care provider that is a current Participant. If an Individual submits an Opt Out Form to or regarding a health care provider that is not a current Participant, the Opt Out Form will not serve to opt the Individual out of ILHIE with regard to that any provider even if the provider becomes a participant at a later point in time. A patient may submit an Opt-Out Form to a Participant that has not yet onboarded patient demographic information data; however, Participant will not transmit the Opt-Out Form to the ILHIE Authority, and the Opt-Out will not become effective, until the Participant has onboarded the patient demographic data information.

7.0 An Individual may elect to opt out of having their his or her Protected Health Information disclosed through ILHIE Connect at any time by executing an Opt-Out Form with respect to each Participant which maintains Protected Health Information which the Individual does not want disclosed. A Participant must allow an Individual to opt out of ILHIE Connect participation at any time, even after having already been enrolled in ILHIE Connect; however, any exchange of Protected Health Information that may have occurred prior to an Individual's decision to opt-out will not be reversed.

8.0 If an Individual elects to opt out of ILHIE Connect at the point of care, and the Individual's identity has been collected by the Participant, the Participant will require the Individual to document his or her decision to opt out by utilizing the Opt-Out Form. A copy of this signed Opt-Out Form will be kept and maintained by the receiving Participant in the Individual's medical record in accordance with the Participant's policies and Applicable Law governing health record retention. If the Individual who is participating in ILHIE Connect fails or refuses to sign an Opt-Out Form at the point of care, the Participant will inform the Individual that the Individual will continue to participate in ILHIE Connect unless the Opt-Out Form is properly completed.

9.0 An Individual may elect to opt out of ILHIE Connect by either of the following means:

- (i) Completing and submitting the Opt-Out Form to the Individual's Participant during an Individual's encounter with the Participant, or

- (ii) Obtaining the Opt-Out Form from the ILHIE Authority website and submitting the completed, notarized form to the ILHIE Authority by U.S. mail, facsimile, or as a scanned attachment to an email.

10.0 An Individual may elect to opt in to ILHIE Connect after not participating by completing and submitting the Opt-In Form to the Individual's Participant during an Individual's encounter with the Participant, and providing any appropriate-necessary consent.

- i) ~~If requested, a Participant will assist the Individual to opt in to participation in ILHIE Connect after not participating. The Participant and will supply the Individual with the Opt-In Form. An Individual may elect to opt in to ILHIE Connect after not participating by completing and submitting the Opt-In Form to the Individual's Participant during an Individual's encounter with the Participant, and providing any appropriate consent.~~
- ii) After an Individual has not participated in ILHIE Connect with respect to a specific Participant(s), an Individual must submit an Opt-In Form to each such Participant(s) that the Individual wishes to share-disclose the Participant's data about the Individual through ILHIE Connect.

11.0 ~~If An Individual with Specially Protected Health Information must elects to to opt in to participate in ILHIE Connect at the point of care by providing any necessary consent to the Participant holding the Specially Protected Health Information and signing the the Participant obtains the requisite written consent for disclosure of Specially Protected Health Information, a copy of the signed Opt-In Form. The Participant obtaining the consent will keep and maintain a copy of the signed Opt-In Form and any requisite-written consent necessary for disclosing the information, including through the ILHIE will be maintained by the receiving Participant~~ in the Individual's medical record in accordance with the Participant's policies and Applicable Law governing health record retention. If the Individual who is requesting to participate in ILHIE Connect fails or refuses to sign an Opt-In Form and requisite written consent for disclosure of Specially Protected Health Information at the point of care, the Participant will inform the Individual that the Individual will not participate in ILHIE Connect for that specific Participant unless the forms are properly completed.

12.0 If Participant's EHR can ensure that Specially Protected Health Information will not be made available through ILHIE Connect, then the Participant must ensure that the Participant's EHR does not make Specially Protected Health Information available through ILHIE Connect unless an Individual with Specially Protected Health Information has given consent to the disclosure of the information to that Participant. If Participant's EHR cannot ensure that an Individual's Specially Protected Health Information will not be made available through ILHIE Connect, then the Participant must either (i) obtain the Individual's consent to disclose the Specially Protected Health Information, or (ii) make the Individual's entire medical record unavailable through ILHIE Connect by on-boarding the Individual as opted-out.

13.0 A minor Individual aged 12 years ~~old~~ or older has the capacity to consent to elect to participate in ILHIE Connect ~~participation~~ to the same extent as a person of legal

age. Participant must provide the ILHIE Notice to a minor Individual aged 12 years old or older and provide such minors the opportunity to opt out. For minor Individuals aged 12 years or older, Participant will comply with the ILHIE Connect participation decision made by the minor Individual aged 12 years or older. A

Participant will comply with the ILHIE Connect participation decision made by a parent or legal guardian for his or her minor child aged 11 or under. If deemed necessary by the Participant, a parent or legal guardian may be required to present the Participant with proof of legal guardianship or other legal authority to act on behalf of a minor child aged 11 or under.

- 14.0** Upon reaching age 12, a minor Individual whose participation decision was previously expressed by his or her parent or legal guardian must be given the opportunity to exercise his or her own participation decision in accordance with the procedures outlined in Sections 1 through 13 above.
- 15.0** Upon on-boarding to ILHIE Connect, each Participant will electronically supply the ILHIE Authority with personal demographic information about all ~~of~~ the Individuals who are patients of Participant so that Other Participants may request the Protected Health Information of Individuals who are patients of the Participant through ILHIE Connect, if available, for Permitted Purposes.
- 16.0** All elections to opt out of ILHIE Connect or to opt in to ILHIE Connect made by Individuals at the point of care will be electronically communicated by the Participant to the ILHIE Authority within one (1) business day of receipt or as required by contract, but in no event should communication take longer than three (3) business days.
- 17.0** Participant shall not deny care to any Individual because he or she elects to participate in, or opt out of, ILHIE Connect.

ILHIE Authority Procedures

- 1.0** The ILHIE Authority will develop, approve, and make freely available on its website the ILHIE Notice, which may be updated from time to time.
- 2.0** The ILHIE Authority will develop, approve, and make freely available on its website the ILHIE Signage, which may be updated from time to time.
- 3.0** The ILHIE Authority will develop, approve, and make freely available an Opt-Out Form, an Opt-In Form, and additional materials and resources for use and display by Participants in offering Individuals meaningful disclosure about ILHIE Connect and an Individual's right to opt-out of ILHIE Connect.
- 4.0** Once an Opt-In Form has been executed by the Individual and communicated to the ILHIE Authority by a Participant, the Individual will participate in ILHIE Connect, with respect to that disclosing Participant, from the date the ILHIE Authority processes the Opt-In request. All Individual ILHIE Connect participation elections which are provided to the ILHIE Authority electronically will be immediately and electronically

recorded by the ILHIE Authority to ensure compliance with each Individual's decision.

- 5.0 An Individual's election to opt out through submission of a complete, notarized Opt-Out Form directly to the ILHIE Authority will be implemented by the ILHIE Authority as soon after receipt as practicable, but in no event longer than three (3) business days.
- 6.0 Upon on-boarding to ILHIE Connect, the Participant will electronically supply the ILHIE Authority with personal demographic information about all ~~of~~ the Individuals that are patients of the Participant. The ILHIE Authority will electronically maintain personal demographic information about Individuals that are patients of each Participant in a Master Patient Index. The ILHIE Authority will also use the Master Patient Index to record and maintain each Individual's ILHIE Connect participation decision with respect to that Participant. The last participation decision received by the ILHIE Authority will govern the Individual's consent preference with respect to that Participant. The ILHIE Authority will utilize Individual personal demographic information to enable Other Participants to access the Protected health-Health information-Information of Individuals for Permitted Purposes.
- 7.0 For an Individual whose Protected Health Information is available for disclosure throughis participating in-ILHIE Connect with-through one or more Participants, the ILHIE Authority will share-disclose that Individual's Protected Health Information in response to a request, made by any Participant for a Permitted Purpose. These disclosures may include a notification of treatment or payment, or a summary of Protected Health Information related to treatment or payment as well as disclosures related to health care operations as allowed by Applicable Law. a summary of all of an Individual's Protected Health Information that is available through ILHIE Connect in response to a query from any Participant.
- 8.0 For an Individual who has opted out of ILHIE Connect with one or more Participants, the ILHIE Authority will not allow disclosure of Protected Health Information from those Participant(s) for any purpose except as permitted by Applicable Law, such as public health reporting. Instead, a message will be sent to the requesting Participant to the effect that there is "no information available."
- 9.0 The ILHIE Authority will provide outreach, educational information and, where requested, technical assistance to Individuals and Participants to promote the consistent implementation of the participation procedures outlined in this Policy and Procedure.

Associated Policies and References:

740 ILCS 110

Request, Use, and Disclosure of Protected Health Information

Emergency Access

Enforcement

Information Subject to Special Protection

Sanctions

Definitions

Applicable Law

EHR

ILHIE Connect

ILHIE Notice

ILHIE Signage

Individual

Master Patient Index

Opt-Out Form

Opt-In Form

Participant

Permitted Purposes

Policies and Procedures

Protected Health Information

Specially Protected Health Information



Policies and Procedures
POLICY: Information Subject to Special Protection
Policy #7
Effective Date: April 2 <u>January 1, 2015-2014</u>

Purpose: This policy describes the handling of Specially Protected Health Information. Specially Protected Health Information may not be disclosed to or through the ILHIE without written Individual consent for disclosure that complies with Applicable Law. The policy also describes the categories of Specially Protected Health Information that must be disclosed through some means other than ILHIE Connect.

The ILHIE Authority is committed to protecting and respecting the privacy of Individual's Protected Health Information, and especially Specially Protected Health Information that may be particularly sensitive.

Terms used in this policy, but not otherwise defined in these Policies and Procedures, shall have the same meaning as set forth in HIPAA.

Policy:

1.0 Individual Consent for Disclosure of Specially Protected Health Information.

Federal and Illinois laws protect against the disclosure of certain categories of Protected Health Information that may be considered particularly private or sensitive to an Individual, unless the Individual consents to the disclosure. An Individual's Specially Protected Health Information may not be disclosed through the ILHIE unless the disclosure is consistent with these Policies and Procedures, in particular the Patient Choice and Meaningful Disclosure Policy (Policy #6), the Data Sharing Agreement, and Applicable Law.

- 1.1 Participants may not disclose to or through ILHIE Connect any Specially Protected Health Information for which the Participant does not have the appropriate-necessary Individual consent to disclose.
- 1.2 Participants shall not disclose through ILHIE Connect any Protected Health Information, including Specially Protected Health Information, protected by 42 C.F.R Part 2.
- 1.3 Any good or service for which an Individual has paid out-of-pocket in full, and for which the Individual has requested the Participant to restrict the disclosure of said goods and services to a Health Plan shall be ~~honored-so restricted~~ by the Participant. Such Protected Health Information shall also be restricted from disclosure to the ILHIE by the Participant.
- 1.4 The ILHIE Authority shall give annual consideration to technological advances that may support granular level data segmentation that increases Individual control over the further disclosure by the ILHIE or another health information exchange to third parties of selected portions of the Individual's record while permitting disclosures of the Individual's remaining Protected Health Information.

1.5 Any Participant who becomes aware that it has received unauthorized Protected Health Information, including Specially Protected Health Information, through the ILHIE shall immediately notify the ILHIE Authority and must return or destroy such unauthorized information.

2.0 Compliance. Participants shall comply with these Policies and Procedures. The ILHIE Authority will monitor and enforce compliance with and adherence to these Policies and Procedures.

2.1 Participant shall cooperate with the ILHIE Authority in its monitoring and enforcement of the Participant's compliance with these Policies and Procedures.

Associated Policies and References:

42 C.F.R Part 2

45 C.F.R §164.522

740 ILCS 14/9.6

Access, Use and Disclosure of Protected Health Information
Enforcement

Patient Choice and Meaningful Disclosure

Sanctions

Definitions

Applicable Law

Health Plan

ILHIE Authority

Individual

Participant

Protected Health Information

Specially Protected Health Information

For the purposes of these Policies and Procedures, the following definitions apply. Terms used, but not otherwise defined shall have the same meaning as set forth in HIPAA.

“Active Individual” or **“Active Patient”** means a patient of a Participant who has sought Treatment from that Participant, or one of that Participant’s Authorized User(s), who is a Health Care Provider, within the prior twenty-four (24) months.

“Applicable Law” means HIPAA, the HITECH Act, and other applicable federal and Illinois law and regulations, as amended or modified from time to time, including but not limited to the Illinois Health Information ~~Exchange~~ Exchange and Technology Act (20 ILCS 3860/).

“Audit Log” means the chronological sequence of audit records, each of which contains data about a specific event.

“Authorized User” means members of a Participant’s Workforce, a Participant’s agents, contractors, Subcontractors or other persons or entities authorized by such Participant, under the procedures set forth in the Data Sharing Agreement, to request, Use or Disclose Protected Health Information from Another Participant’s System. Alternatively, as appropriate in context, Authorized User means those members of the ILHIE Authority’s Workforce, the ILHIE Authority’s agents, contractors, Subcontractors or other persons or entities authorized by the ILHIE Authority to request, Use or Disclose Protected Health Information that is transmitted through the ILHIE, or those members of Another Participant’s Workforce, such Other Participant’s agents, contractors, Subcontractors or other persons or entities authorized by the Other Participant to request, Use or Disclose Protected Health Information that is transmitted through the ILHIE.

“Affected Participant” means any Participant (other than a Breaching Participant) with respect to which a Breach has occurred or for which there is a reasonable possibility that a Breach has occurred with respect to its Systems or Protected Health Information, but which does not involve an act or omission of the Affected Participant or any of its Authorized Users, Workforce, Business Associates, or Subcontractors that caused the Breach.

“Breach” means any acquisition, access, use, or disclosure of Protected Health Information which utilizes ILHIE technology or infrastructure or which allows unauthorized access to ILHIE technology, ILHIE infrastructure or Protected Health Information through the ILHIE, and which compromises the security or privacy of such information except as set forth in 45 C.F.R §164.402. A acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted by the Data Sharing Agreement, HIPAA, PIPA or other Applicable Law is presumed to be a Breach, unless the Breaching Participant or the ILHIE Authority demonstrates that there is low probability that Protected Health Information has been compromised based on a risk assessment using the factors set forth in 45 C.F.R §164.402 *and* the Breaching Participant or the ILHIE Authority demonstrates that the acquisition, access, use, or disclosure does not constitute a Breach under HIPAA, PIPA or other Applicable Law.

“Breaching Participant” means a Participant whose act or omission, or the act or omission of that Participant’s Authorized User, Workforce member, Business Associate, or Subcontractor, caused a Breach.

“Data Sharing Agreement” or **“DSA”** means the data sharing agreement entered into by and between the ILHIE Authority and a Participant for the use of ILHIE Connect.

“Deactivation Notice” means the notification given by the ILHIE Authority to a Participant informing the Participant that an Authorized User of the Participant will no longer be able to access Protected Health Information through ILHIE.

“Department of Health and Human Services” or **“HHS”** means the United States Department of Health and Human Services.

“EHR” means electronic health record.

“Health Information Exchange” or **“HIE”** means a Health Information Exchange as defined in the Illinois Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/) and any regulations promulgated or standards developed thereunder, as amended from time to time, and any other health information exchange including but not limited to federal HIEs and HIEs in states other than Illinois, that have executed a data sharing agreement with the ILHIE Authority.

“HIPAA” means, without limitation, the federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191) and its implementing regulations on privacy and security found at 45 C.F.R. Parts 160 and 164, as the same may be amended from time to time, including modifications to the HIPAA Security and Privacy Rules arising from the Health Information Technology for Economic and Clinical Health (HITECH) Act (Pub. L. 111-5).

“HITECH” means the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, and any and all regulations promulgated thereunder, as amended from time to time.

“ILHIE” means the Illinois Health Information Exchange as established by the Illinois Health Information Exchange and Technology Act, and any and all regulations promulgated thereunder, as amended from time to time.

“ILHIE Authority” means the Illinois Health Information Exchange Authority as established by the Illinois Health Information Exchange and Technology Act. Unless otherwise specified, “ILHIE Authority” shall include its Workforce, contractors, Subcontractors, and Business Associates.

“ILHIE Connect” means the ILHIE Authority’s ILHIE Connect service, a State-wide ~~bi-directional~~ health information exchange, which may include any or all of the following services: bidirectional exchange, alerts and notifications and any other related services that utilize the Master Patient Index.

“ILHIE Breach” shall mean a Breach of the ILHIE during the transmission of Protected Health Information through the ILHIE or a Breach due to the act or omission of the ILHIE Authority. An ILHIE Breach does not include a Breach of the ILHIE that did not occur during transmission through the ILHIE or a Breach that is not due to the act or omission by the ILHIE Authority.

“ILHIE Notice” means written notice developed and approved by the ILHIE Authority for use by Participants to provide Active Patients with meaningful disclosure about ILHIE Connect and that explains the function of ILHIE Connect, the purposes for disclosure of a patient’s Protected Health Information to Another Participant, the potential benefits and risks to an Individual of participation in ILHIE Connect and any other information as required by law. The ILHIE Notice will further explain an Individual’s right to opt out of ILHIE Connect and directs the Individual to the ILHIE Authority’s website containing (i) an explanation of the purposes of the health information exchange and (ii) audio, visual, and written instructions on how to opt out of ILHIE Connect.

“ILHIE PCO” means the ILHIE Privacy and Compliance Officer or other individual designated by the ILHIE Authority.

“ILHIE Signage” means signage developed and approved by the ILHIE Authority that briefly describes ILHIE Connect, Individual opt-out rights, and that identifies the ILHIE Authority website.

“Informational Notification” means the notification that a Breaching Participant gives to ILHIE Authority and Affected Participants. Informational Notification should be contrasted to “Legal Notification” which is that notification required by HIPAA, HITECH and other Applicable Law.

“Legal Notification” means notification required by law to be made in the event of a Breach.

“Master Patient Index” means the Master Patient Index that is maintained by the ILHIE Authority which holds (i) demographic information about each Individual enrolled by a Participant, (ii) a list of each such Individual’s health care providers that are Participants, and (iii) each such Individual’s consent preference with regard to each Participant.

“Meaningful Use” or “Meaningful Use Regulations” means the regulations put forth by the Centers for Medicare & Medicaid Services in the final rule on meaningful use, found at 42 C.F.R. Parts 412, 413, 422, and 495, and the regulations put forth by the Office of the National Coordinator for Health Information Technology, found at 45 C.F.R. Part 170.

“National Institute of Standards and Technology” or “NIST” means the non-regulatory federal agency within the U.S. Department of Commerce.

“Opt-Out Form” means the “Illinois Health Information Exchange Authority’s ILHIE Connect Opt-Out Form” developed and approved by the ILHIE Authority ~~for use~~ to document an Individual’s ILHIE Connect opt-out decision, and which may be updated from time to time.

“Opt-In Form” means the “Illinois Health Information Exchange Authority’s ILHIE Connect Opt-In Form” developed and approved by the ILHIE Authority ~~for use~~ to document an Individual’s ILHIE Connect opt-in decision for patients who previously did not participate in ILHIE Connect, and which may be updated from time to time.

“Other Participant” or “Another Participant” means any other individual or entity including without limitation another HIE that has signed a Data Sharing Agreement to participate in the ILHIE.

“Participant(s)” means an individual ~~who~~ or entity, including without limitation an HIE, that has executed a Data Sharing Agreement with the ILHIE Authority. ~~In the future,~~ Participants may include public and private health ~~insurance~~ plans.

“PIPA” means the Illinois Personal Information Protection Act (815 ILCS 5301/), and any and all regulations promulgated thereunder, as amended from time to time.

“Permitted Purpose(s)” means the following purposes for which Participant(s) and the ILHIE Authority are authorized to access, acquire, request, use, and/or disclose Protected Health Information through the ILHIE: (i) Treatment of the Individual who is the subject of the Protected Health Information; (ii) Payment activities of the Health Care Provider for the Individual who is the subject of the Protected Health Information; (iii) Health Care Operations allowed by HIPAA; (iv) public health activities and reporting as permitted by HIPAA and other Applicable Law; (v) any purpose to demonstrate meaningful use of certified electronic health record technology in accordance with the Meaningful Use Regulations and as allowed by Applicable Law; and (vi) uses and disclosures pursuant to an Authorization provided by the Individual who is the subject of the Protected Health Information or such Individual’s personal representative as described in 45 C.F.R §164.502(g) of the HIPAA regulations. Protected Health Information shall be accessed, acquired, requested, used and disclosed in compliance with the Data Sharing Agreement, these Policies and Procedures, and Applicable Law. At this time, there is no secondary data use allowed. Any purpose that is not a Permitted Purpose is a secondary data use.

“Policies and Procedures” means these Policies and Procedures which are the ILHIE Authority standards, policies and procedures adopted by the ILHIE Authority, as updated, changed or supplemented from time to time.

“Specially Protected Health Information” means alcohol and substance abuse treatment information that is protected under federal or Illinois law, ~~HIV test results and the identity of the tested patient, genetic testing and information,~~ child abuse and neglect reports and records, sexual assault evidence and information, veteran’s homes resident records, and all other health information that requires specific written patient consent for disclosure under federal or Illinois law, as amended from time to time.

“System” or “Information System” means an interconnected set of information resources under the same direct management control that shares common functionality. A System normally includes hardware, software, information, data, applications, communications, and people. For purposes of these Policies and Procedures, a System is the System by which Participant holds or exchanges Protected Health Information under this Agreement. For purposes of these Policies and Procedures, it shall not matter whether Participant controls

or utilizes the System through ownership, lease, license, or otherwise. Where appropriate in context, "System" or "Information System" shall also mean the ILHIE Authority system.

"System Administrator" means the authorized individual(s) who has been assigned primary responsibility for maintaining and managing a System.