

# 2.100 Consumer Opt Out Election Policy

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## Policy Summary

Alaska eHealth Network (AeHN) is committed to supporting the direct involvement of consumers in electing whether or not to participate in the statewide health information exchange by having protected health information (PHI) included in the Alaska HIE clinical data repository. The consumer opt out election process has been defined to support managing the execution of consumer choice about whether or not to participate in the health exchange in accordance with Alaska law.

## Purpose

This policy reflects AeHN's commitment to support a consumer election process to opt out of having protected health information (PHI) included in the statewide health information exchange.

## Scope/Applicability

This policy is applicable to all AeHN workforce members involved in the execution of the consumer opt out election process and the use or disclosure of EPHI that may be involved in that process.

This policy assumes that a Participant Agreement (PA) has been executed between AeHN and an Alaska covered entity electing to use the statewide health information exchange to support patient treatment and that the PA and Business Associate Agreement (if applicable) define the Alaska HIE's responsibilities for managing an opt out program on behalf of the covered entity.

This policy's scope includes all EPHI contained in the Alaska Health Information Exchange clinical data repository.

## Regulatory Category, Type, Legal Regulatory Reference

Standard, AS 18.23.310; 45 CFR 164.308(a)(2)(i)

## Policy Authority/Enforcement

AeHN's Executive Director (ED) and Privacy and Security Officer (PSO) are responsible for monitoring and enforcement of this policy.

## Related Policies & Procedures

- 4.202 Notice of Privacy Practices Procedure
- 4.203 Individual Control of Information Available Through the System Procedure

## Renewal/Review

This policy is to be reviewed annually to determine if the policy complies with current HIPAA Security regulations and to ensure that it incorporates all recent developments in AeHN policies, procedures, activities, equipment and technology. In the event that significant related legal, regulatory or organizational changes occur, the policy will be reviewed and updated as needed.

## Policy

- I. **Opt-Out Election System.** The Alaska HIE defines, builds and maintains both a manual (paper-based) and an electronic system to enable consumers to execute an election form to establish their decision to opt out or opt back in to having protected health information (PHI) entered, managed, stored and made available through the statewide health information exchange to support clinical treatment, payment and related activities. This election system:
  - A. Is designed to make the election process easy to execute.
  - B. Allows for two levels of opt-out: (1) total opt-out with no information available on the system other than as required by law; and (2) partial opt-out with information available only in emergency situations.
  - C. In either opt-out level, legally required public health reporting, such as the reporting of infectious diseases to public health officials, will still occur through the HIE. This is the same reporting that currently occurs with PHI, with simply a different method of communication.
  - D. Requests the minimum amount of personal identifier information needed to effectively accomplish initiating and sustaining an opt out or opt back in decision.
  - E. Provides a clear explanation to consumers for why personal identifier information is needed to support the opt out, opt back in process and how that information will be used and retained.
  - F. Clearly identifies personal identifier information that is required to accomplish the opt out/opt back in process and personal identifier information that is desired but optional to support this process.

- G. Is delivered through a secure Internet connection session for the electronic election process.
  - H. Provides contact information to support having consumers address and resolve questions that are related to the election system.
- II. Communication Strategy. The Alaska HIE works directly with provider organizations, businesses, payers, government, advocacy groups and other statewide organizations with an interest in the statewide health information exchange to define, develop, maintain and promote a consumer education strategy that informs consumers about:
- A. The purpose of the health information exchange.
  - B. The categories of protected health information (PHI) that will be managed through the health information exchange.
  - C. Who will have access to PHI through the health information exchange.
  - D. The nature of the opt-in system and default settings if the consumer does not elect to opt-out.
  - E. What the advantages are for consumers who choose to participate in the health information exchange.
  - F. What the possible risks are for consumers who choose to participate in the health information exchange.
  - G. What a consumer needs to do to elect not to have PHI included in the statewide health information exchange.
- III. Management of Opt-Out System. The electronic opt out/opt back in election management system is built and managed to:
- A. Edit individual data field entries to assure completeness and accuracy before submission is permitted.
  - B. Provide an electronic confirmation to the consumer acknowledging receipt of an election submission with instructions for what to do if the election was submitted in error.
  - C. Provide the interface controls that will manage successful communication of the election request to the health information exchange's person identity management system.
  - D. Provide the system administration tools that will validate the successful match of an election request with an existing person identifier record active in the health information exchange or the creation of a new person identifier record.

- E. Provide the audit tools to support schedule review and confirmation that an opt out/ opt back in election has been activated accurately at a person specific level.
  - F. Provide audit tools to support scheduled system review and confirmation that all PHI for consumers electing to opt out of the statewide health information exchange has been removed from accessibility on the database and that the active opt out “flags” set in the system coincide with no PHI being present in the system for all dates after the person elects to opt out.
- IV. Retention of Personal Identifiers. Personal identifier information collected by the Alaska HIE through the electronic opt out/opt in election process will be retained in the election processing system for no more than 72 hours in order to assure completion of the election process. This personal identifier information will be deleted from the opt out/opt in election process system upon completion of the election process, if the individual chooses to fully opt-out of all levels of participation.
- V. Paper-based Opt-Out. The manual paper-based opt out/opt in election process will:
- A. Be date stamped with date of receipt.
  - B. Assure that election forms received are reviewed for completeness of required personal identifier information.
  - C. Require telephone or mail follow up with a consumer if an election form does not include the person identifier information required to complete the election process.
  - D. Provide a written, mailed confirmation letter to the consumer acknowledging receipt of an election submission with instructions for what to do if the election was submitted in error and how to opt back in.
  - E. Complete the entry of individual election forms in to the health information exchange within seven (7) business days from the date the election form is received by the Alaska HIE.
- VI. Retention of Paper-based Opt-Out Forms. Paper-based opt out/opt in election forms will be held by the Alaska HIE for up to 1 year to assure completion of the election process. These forms will be destroyed after 1 year of retention

<b>Consumer Opt Out Election Policy 2.100 v.3</b>		
APPROVED BY: AeHN Board	ADOPTED:	7/20/2011
	REVIEWED:	9/21/2011
	REVISED and REVIEWED:	2/20/2013