

**TITLE: Individual Notice and Participation**

Policy #: HEN-009	Effective Date: June 19, 2013
Program: Hawai'i HIE	Revision Date: April 20, 2016
Approved By: Hawai'i HIE Board of Directors	

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## **1. Purpose**

The purpose of this policy is to describe how individuals will be informed of the uses and disclosures of their protected health information (PHI) in the Hawai'i HIE Health eNet System, and how an individual may request that his/her participation in the System stop (i.e. "Opt-Out") or resume (i.e. "Opt-Back-In").

"Individual participation" refers to the availability of an individual's PHI to be accessed, used or disclosed via the Health eNet. By default, the participation status of an individual whose PHI has been contributed to the Health eNet Community Health Record (CHR) by a Participant is "Opt-In", i.e. the individual's PHI is available to Participant's Authorized Health eNet Users who may access, use or disclose the individual's PHI for treating the individual and other appropriate purposes, according to the Hawai'i HIE's HEN-006 *Appropriate Use and Disclosure Operational Policy and Procedures*.

## **2. Scope**

The scope of this policy applies to all Health eNet service lines, however, the mechanism for stopping and resuming individual participation varies between service lines, as further described in this policy and its related procedure.

An individual seeking to change his/her participation status regarding Health eNet Direct-Secured Messaging and Secured Conduits must direct his/her request to the Participant exchanging the individual's PHI via these Health eNet service lines.

### 3. Definitions

**Personal Representative.** A person with the authority to act on behalf of an individual, living or deceased, regarding decisions related to the individual's health care and/or exercising the individual's rights permitted by HIPAA with respect to the individual's protected health information, per 45 CFR §164.502(g) and applicable state law, e.g. parent or guardian, agent acting for an individual under a power of attorney.

**Protected Health Information (PHI).** Personally Identifiable Information related to the health care of an individual that meets the HIPAA definition at 45 CFR §160.103.

### 4. Policy

**4.1. Authority to Exchange Protected Health Information via the Hawai'i HIE.** Except for certain PHI afforded special protection under federal and/or state laws, Participants that are covered entities may exchange PHI for treatment, payment and limited health care operations without an individual's authorization or consent. An individual has the right to be informed about certain other types of disclosures of his/her PHI.

**4.2. Personal Representatives.** Personal Representatives, in accordance with HIPAA, other applicable federal and state laws, and guidance from the U.S. Office for Civil Rights<sup>1</sup>, may submit requests to Participants to restrict the availability of the individual's PHI via the Health eNet.

A Participant may choose not to treat a person as the individual's Personal Representative if the Participant reasonably believes that the Personal Representative might endanger the individual, e.g. in situations of domestic violence, abuse, or neglect.

Procedure
1. When making a request for a restriction of disclosure of PHI via the Health eNet, if an individual has a Personal Representative acting on his/her behalf, the Personal Representative will be required to provide proof of authority and/or identity to the Participant and/or the Hawai'i HIE.

- When making a request for a restriction of disclosure of PHI via the Health eNet, if an individual has a Personal Representative acting on his/her behalf, the Personal Representative will be required to provide proof of authority and/or identity to the Participant and/or the Hawai'i HIE.

**4.3. Requests to Restrict Uses and Disclosures of Protected Health Information.** An individual, or a personal representative acting on behalf of the individual, has the right to request

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<sup>1</sup> "Personal Representatives" guidance provided by the U.S. Office for Civil Rights:  
<http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/personalreps.html>.

restrictions on uses and disclosures of the individual's PHI for treatment, payment and health care operations. Participants that are covered entities under HIPAA may refuse a request for restrictions, except for a request to restrict access by a health plan to PHI related to services paid in full by the individual, which must be granted.

- 4.4. Individual Notice.** Participants are responsible for informing individuals: 1) of the uses and disclosures of the individuals' PHI via the Health eNet, and 2) of the individuals' choices for requesting changes in participation status.

Information about individual participation in the Health eNet CHR and other health information exchange services may be provided through a Participant's Notice of Privacy Practices (NPP), or other posting/provision of information.

<b>Procedure</b>
<p>1. Participant determines method for communication of individual notice, as described in this procedure and its corresponding policy, for example:</p> <p>A. If Participant chooses to notify an individual via the Participant's HIPAA Notice of Privacy Practices (NPP), then Hawai'i HIE provides the following sample language that can be added to the NPP:</p> <p style="padding-left: 40px;"><i>"We participate in one or more Health Information Exchanges ("HIEs"). This means that your health information and identifiers are available electronically for the purposes of treatment, payment and care coordination services. Other providers and health plans participating in these HIEs may access this information."</i></p> <p>B. The Participant may provide to individuals, or post in its office, an electronic or hard copy version of the Hawai'i HIE's Notice of Data Practices (NDP). Please see sub-section 4.8.2, "Notice of Data Practices", for more information about the NDP.</p>

- 4.5. Default Individual Participation Status.** By default, the participation status of an individual whose PHI has been contributed to or exchanged via the Health eNet by a Participant is "Opt-In" for all Health eNet services lines, i.e. the individual's PHI may be accessed, used or disclosed for an appropriate purpose via any Health eNet service line to which the Participant subscribes.

To change participation status, an individual, or his/her personal representative, may request stopping (i.e. to "Opt-Out" of) his/her PHI participation in one or more Health eNet service lines. After Opting-Out, an individual may subsequently ask for participation to resume (i.e. "Opt-Back-In") at any time, to again allow exchange of the individual's PHI.

## **4.6. Choices Regarding Individual Participation**

- 4.6.1.** **Opt-Out.** All Opt-Out requests must be submitted to, and granted or denied by a HIPAA covered entity Participant. In the event a Participant grants an Opt-Out request, the process for “Opt-Out” varies by Health eNet service line.

Effect of Opt-Out Regarding the Health eNet Community Health Record. If an Opt-Out of the Health eNet CHR is granted, then all of an individual’s PHI residing in the CHR will be made unavailable for query via the CHR, not just with respect to a particular Participant or episode of care. An individual’s election to Opt-Out, whether made at or subsequent to the time of service, will have prospective effect only, and will not impact access, uses or disclosures of his/her PHI that occur before the Opt-Out request is received and processed by the Hawai‘i HIE. Following Opt-Out, an individual’s PHI will continue to reside within the Health eNet CHR, but will be unavailable for query.

<b>Procedures</b>
1. Participants shall establish reasonable and appropriate processes to enable the exercise of individuals’ choices not to have their information exchanged via the System.
2. An individual may Opt-Out by submitting an Opt-Out request via a Participant with whom he/she has a direct provider-to-patient relationship. An individual can obtain an Opt-Out request form for the CHR via the Hawai‘i HIE website.
3. Please see Appendix A, “Choices Regarding Individual Participation in the Health eNet”, for Opt-Out processes specific to each current Health eNet service line.

Scope of Opt-Out of Health eNet Community Health Record. A decision to Opt-Out only affects the availability of the individual’s PHI through the Health eNet CHR. Each Participant’s policies continue to govern access, use and disclosure of PHI in all other contexts, including other Health eNet service lines (please see Appendix A for additional details), and via all other services and media.

Opt-Out Exceptions. Individuals cannot Opt-Out of disclosures for public health activities, except as provided by applicable laws. Individuals also cannot Opt-Out of other disclosures required by law (e.g. subpoenas, court orders).

- 4.6.2.** **Opt-Back-In.** An individual, or individual’s personal representative, who has chosen to Opt-Out the individual from participation in the Health eNet may choose to Opt-Back-In to unblock querying of the individual’s PHI.

<b>Procedure</b>
1. Please see Appendix A, “Choices Regarding Individual Participation in the Health eNet”, for Opt-Out processes specific to each current Health eNet service line.

- 4.7. Participant Education.** Hawai'i HIE will strive to provide Participants with consistent information and documentation regarding the Hawai'i HIE, including the Opt-Out / Opt-Back-In process. The Hawai'i HIE will provide Participants with FAQs related to Opt-Out and Opt-Back-In. The FAQs will also be available via the Hawai'i HIE website.
- 4.8. Documentation.** Opt-Out and Opt-Back-In Documentation. The Hawai'i HIE shall maintain all Opt-Out and Opt-Back-In documentation received pursuant to this policy for a minimum of six (6) years.
- 4.8.1. Individual Participation Status Change Notifications.** The Site Administrator for a Participant granting an individual's Opt-Out or Opt-Back-In request shall notify the individual in writing that the change in the individual's participation status has been processed.
- 4.8.2. Notice of Data Practices.** The Hawai'i HIE shall make publicly available a Notice of Data Practices describing why PHI is collected in the Health eNet, how PHI in the Health eNet is used, and to whom and for what reasons PHI is disclosed via the Health eNet. The NDP is available via the Hawai'i HIE's website: <https://www.hawaiihie.org/Patients/Documents.aspx>.

## 5. Revision History

Revision Date	Revision Type*	Author(s)	Revision Rationale, Description	Approved by
June 19, 2013	New	Legal/Policy Committee (policy sub-committee)	Initial version of policy	Hawai'i HIE Board of Directors
Apr. 20, 2016	Amendment	Legal/Policy Committee	Table of contents, section numbering and procedures added; existing definitions and policy sections edited to reflect current Health eNet services and operations	Hawai'i HIE Board of Directors

\* Revision Type options = New, Amendment, Minor Amendment, Consolidation (i.e. merging of multiple policies)

**Appendix A**  
(Revised April 20, 2016)

**Choices Regarding Individual Participation in the Health eNet**

This document provides an overview of the individual participation options available for the current suite of Health eNet service lines.

**A. Individual Participation, by Service Line.**

Service Line	Default Individual Participation Status	Process for Changing Individual Participation Status
Health eNet Community Health Record (CHR)	Participant/ Opt-In	<p><u>Opt-Out</u>. A request to stop individual participation in the Health eNet CHR will be treated as a request to restrict access, use and disclosure of PHI for treatment, payment and health care operations via the Health eNet CHR.</p> <p>Individual / Personal Representative submits Health eNet CHR Opt-Out request form to Participant. If Opt-Out granted by Participant, Participant forwards request form to Hawai'i HIE. Hawaii HIE blocks queries and transmissions of Individual's ePHI.</p> <p>Please see section B, "Stopping Individual Participation in (i.e. "Opt-Out" of) Health eNet Community Health Record", for additional CHR Opt-Out details.</p> <p><u>Opt-Back-In</u>. Individual / Personal Representative submits Opt-Back-In request form to Participant. Participant forwards request form to Hawai'i HIE. Hawai'i HIE makes system changes to resume queries and transmissions of Individual's ePHI.</p>
Health eNet Referral, and Health eNet Direct-Secured Messaging	Participant/ Opt-In	<p><u>Opt-Out</u>. Individual / Personal Representative requests that a Participant Opt-Out the individual. If Opt-Out is granted by Participant, according to Participant's policies and procedures, Participant stops transmission of Individual's ePHI via Referral or Secured Messaging.</p> <p><u>Opt-Back-In</u>. Individual / Personal Representative requests that a Participant resume using Referral or Direct-Secured Messaging to exchange information about the individual, Participant may resume transmission of Individual's ePHI, according to Participant's policies and procedures.</p>
Health eNet Secured Conduits	Participant/ Opt-In	<p><u>Opt-Out</u>. Individual / Personal Representative requests that a Participant Opt-Out an individual. If Opt-Out is granted by Participant, according to Participant's policies and procedures, and allowed under applicable federal and state laws, Participant stops transmission of Individual's ePHI via the Secured Conduit.</p>

		<u>Opt-Back-In</u> . Individual / Personal Representative requests that a Participant resume using Secure Conduits to exchange information about the individual, Participant may resume transmission of Individual's ePHI via the Secured Conduit, according to Participant's policies and procedures.
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- B. Stopping Individual Participation in (i.e. “Opt-Out” of) Health eNet Community Health Record.** In the event an individual’s request Opt-Out of Health eNet CHR is granted and executed, Participants may continue to contribute the individual’s PHI to the Health eNet CHR, but the PHI will not be accessible by Health eNet Authorized Users.

<b>Procedures</b>
1. Requester (i.e. individual or individual’s Personal Representative) chooses to Opt-Out the individual.
2. Requester downloads the Health eNet CHR Request to Stop Individual Participation (Opt-Out) form from the Hawai’i HIE’s website, or obtains a copy of the form from a Participant that has a treatment relationship with the individual (i.e. Participating Provider).
3. Requester completes and submits the Opt-Out Request Form to the Participating Provider.
4. A. Participating Provider’s Primary Point of Contact verifies the information on the Opt-Out Request Form, then submits a copy of the Opt-Out Request Form to the Hawai’I HIE via one of the following methods, to the attention of “Community Relations”:
1) Fax to (808) 441-1472
2) Mail to: Hawai’I Health Information Exchange 900 Fort Street Mall, Suite 1305 Honolulu, HI 96813
B. The Participating Provider should maintain all Opt-Out Requests and any supporting documentation on file for the duration of their relationship with the patient or a minimum of six (6) years.
C. Participating Providers may contact Hawai’I HIE Community Relations for assistance regarding this procedure at (808) 441-1411.
5. Hawai’i HIE System Administrator completes Opt-Out process within ten (10) business days of receiving Opt-Out Request Form.
6. Hawai’i HIE sends written notification of Opt-Out to the requester within ten (10) business days of receipt of Opt-Out Request Form.

- 1. Restriction of Transmissions of Information to Health eNet Community Health Record.** A request to restrict transmissions of an individual’s PHI by a treating Participant to the Health eNet CHR will be treated as a request to restrict disclosures of PHI for treatment, payment and health care operations by the treating Participant.

<b>Procedures</b>
1. Requester (i.e. individual or individual’s Personal Representative) requests that a Participant restrict transmission of the individual’s PHI to the Health eNet CHR.
2. Participant chooses whether or not to grant the request, and then notifies the requester of the decision.
3. If the Participant grants the request, the Participant shall take the necessary steps to

ensure PHI is not transmitted to the CHR.

2. **Stopping Individual Participation in Other Health eNet Service Lines.** An individual or Personal Representative seeking to stop the individual's participation in another Health eNet service line, e.g. Health eNet Referral, Secured Messaging and Secured Conduits, must direct his/her request to the Participant exchanging the individual's PHI via the service line.

**Procedures**

1. Requester submits a request to Opt-Out to the Participant utilizing a Health eNet service line other than the CHR.

Do not use the Health eNet CHR Request to Stop Individual Participation (Opt-Out) form when submitting Opt-Out requests to Participants for service lines other than the CHR.
2. If the requester directly submits to the Hawai'i HIE a request to Opt-Out of a Health eNet service line other than the CHR, the Hawai'i HIE will refer such requests to any Participating Providers utilizing the service line that have treatment relationships with the individual, based on information within the Health eNet.
  - A. A Participant that receives a referred request for Opt-Out of Secured Messaging will determine whether or not to grant a request to Opt-Out of Secured Messaging, based on the Participating Provider's policies and procedures.
  - B. A Participating Provider that receives a referred request for Opt-Out of Secured Conduits will abide by applicable laws regarding whether or not to grant an Opt-Out request if the service line is used for mandated public health disclosures, or disclosures otherwise required by law (e.g. subpoenas, court orders).

3. **Resuming Individual Participation in Health eNet Community Health Record (i.e. "Opt-Back-In")**

An individual or Personal Representative who has chosen to stop (i.e. Opt-Out of) participation in the Health eNet CHR may choose to Opt-Back-In to allow access to the individual's PHI by Authorized Users to resume.

**Procedures**

1. Requester chooses to Opt-Back-In (if the requester is a Personal Representative, then Opt-Back-In pertains to the individual being represented).
2. Requester downloads the Health eNet CHR Request to Resume Individual Participation (Opt-Back-In) form from the Hawai'i HIE's website, or obtains a copy of the form from a Participating Provider.
3. Requester completes and submits the Opt-Back-In Form to a Participating Provider.
4. Participating Provider verifies the information on the Opt-Back-In Request Form with the requester, and signs Opt-Back-In Form.
5. Participant submits a copy of the Opt-Back-In Request Form to the Hawai'i HIE via one of the following methods, to the attention of "Community Relations".
  - Fax to (808) 441-1472
  - Mail to:  
Hawai'i Health Information Exchange  
900 Fort Street Mall, Suite 1305  
Honolulu, HI 96813

The Participant should maintain all Opt-Back-In Requests on file for the duration of its relationship with the patient or a minimum of six (6) years.
6. Hawai'i HIE system administrator completes Opt-Back-In process within ten (10) business days of receiving the Opt-Back-In Request Form.
7. The Hawai'i HIE sends written notification of Opt-Back-In Status sent to the requester within ten (10) business days of receipt of the Opt-Back-In Request Form.