

## Operating Policy and Procedure

<b><u>Subject: Data Use and Reciprocal Support Agreement and Amendment Process</u> SUBJECT: DATA USE AND RECIPROCAL SUPPORT AGREEMENT AND AMENDMENT PROCESS</b>		
<b>Status: FINAL – Approved by CC</b>	<b>POLICY #: OPP-8</b>	
<b>Effective Date: <del>1/19/13</del> 06/01/2020</b>	<b>Version: 2.08</b>	<b>Page 1 of 5</b>

### I. ~~I.~~ Purpose

The Coordinating Committee has responsibility for managing amendments to the Data Use and Reciprocal Support Agreement (“DURSA”). The purpose of this policy is to set forth the process by which the Coordinating Committee will fulfill this responsibility.

### II. ~~II.~~ Policy

The Coordinating Committee shall establish and maintain a process for amending the Data Use and Reciprocal Support Agreement (DURSA) that is consistent with Section 23.02 of the DURSA. An amendment to the DURSA shall be effective only if approved as provided in this policy and Section 23.02 of the DURSA.

### III. ~~III.~~ Procedure:

#### A. Retention and Dissemination of the DURSA and Joinder Agreements

eHealth Exchange support staff shall maintain the DURSA in a publicly accessible location on behalf of the Coordinating Committee.

eHealth Exchange support staff shall maintain all original, executed copies of the DURSA and Joinder Agreements on behalf of the Coordinating Committee. In addition, eHealth Exchange support staff shall also maintain a list of the current and prior Production Participants in a publicly accessible location.

The current version of the DURSA as well as originals of all previous versions shall be maintained for the duration of their usefulness as determined by the Coordinating Committee.

#### B. Submission of Proposed Amendments to the DURSA

Any Member of the Coordinating Committee, Participant or any other stakeholder that the Coordinating Committee deems appropriate may submit in writing to the Coordinating Committee a request for an amendment to the DURSA. Additionally, the Coordinating Committee may, at its discretion, solicit requests for amendments to the DURSA from all Participants and other interested stakeholders.

All requests for proposed amendments shall identify (i) the section of the DURSA that is the subject of the requested amendment (if any), (ii) a thorough description of why the requested

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amendment is necessary, (iii) the proposed language for the requested amendment; and (iv) an analysis of the expected impact of the requested amendment.

C. Consideration of Proposed Amendments to the DURSA

The Coordinating Committee will forward any requests that meet the submission criteria set forth in Section III.B to eHealth Exchange support staff to coordinate an initial legal review. Following this initial legal review, eHealth Exchange support staff will present the requested amendment to the Coordinating Committee for the Committee’s initial consideration at the next regularly scheduled meeting. After considering the request, the Coordinating Committee determines how to disposition the request and will communicate this determination to the requestor in a written explanation.

If, after considering the request, the Coordinating Committee determines that the request requires further consideration, it will forward the request to a task group designated by the Coordinating Committee to review the request and make a recommendation for action to the Coordinating Committee.

If the task group’s recommendation is that the DURSA should not be amended and the Coordinating Committee approves such a recommendation, the Coordinating Committee will inform the requestor of its determination in a written explanation.

If the task group’s recommendation is to amend the DURSA and the Coordinating Committee approves such a recommendation, the Coordinating Committee will identify the timeframe in which it will seek Participant approval of the recommended amendment, either individually or bundled with other scheduled amendments, and when the amendment should be circulated for Participant signature.

When the Coordinating Committee informs the Participants of its recommendations for amendments to the DURSA and seeks Participant approval of such amendments, the Coordinating Committee will provide Participants with the following information:

- A copy of the proposed amendment to the DURSA;
- A reasonably comprehensive statement as to the reasons for the proposed amendment and any foreseeable impact of the change;

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- A statement regarding whether the proposed amendment is necessary in order for the eHealth Exchange, the Coordinating Committee, or Participants to comply with Applicable Law;
- A projected effective date for the proposed amendment; and
- A time period for the Participant to submit its approval or rejection of the proposed amendment, with sufficient time for Governmental Participants to get any necessary approvals through their clearance process.

If all Participants are represented on the Coordinating Committee, the obligation to inform all Participants of the proposed amendment may be satisfied through discussion of the amendment at a meeting of the Coordinating Committee.

D. Approval of Proposed Amendments to the DURSA

Amendments to the DURSA must be approved by the Participants in accordance with Section 23.02 of the DURSA. The requirements of that section are explained below.

For proposed amendments to the DURSA that are not required for the eHealth Exchange, the Coordinating Committee, or Participants to comply with Applicable Law, at least two-thirds of the Non-Governmental Participants and at least two-thirds of the Governmental Participants must approve the amendment in order for it to be approved.

For proposed amendments to the DURSA that are required for the Coordinating Committee, or Participants to comply with Applicable Law, at least a majority of the Non-Governmental Participants and at least a majority of the Governmental Participants must approve the amendment in order for it to be approved.

The Coordinating Committee will provide all Participants with notice of the approval of a proposed amendment at least thirty (30) calendar days prior to the effective date of the amendment. Within fifteen (15) calendar days of receiving notice of the amendment, a Participant may request that the Coordinating Committee delay the effective date of the amendment based on unforeseen complications or other good cause. The Coordinating Committee will meet to evaluate and respond to the request in writing within seven (7) calendar days.

Once an amendment is approved by the Participants, the Coordinating Committee will distribute or make the amendment available for execution by all Participants, who must sign the amendment to the DURSA prior to the effective date of the amendment or terminate their participation in accordance with the DURSA and Operating Policy and Procedure 3.

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#### IV. **Definitions:**

**DURSA:** Data Use and Reciprocal Support Agreement

All other capitalized terms, if not defined herein, shall have the same meaning as set forth in the DURSA.

#### V. **References:**

“Restatement II of the Data Use and Reciprocal Support Agreement (DURSA)”, Version Date: August 13, 2019

- Section 23.02, Amendment

#### VI. **Related Policies and Procedures:**

- OPP #3, Participation – Changes, Suspension, Termination

#### VII. **Version History:**

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	<u>Date</u>	<u>Author</u>	<u>Comment</u>
<u>1</u>	<u>3/9/10</u>	<u>Steve Gravely and Erin Whaley</u>	<u>Original Draft, based on request of the NHIN CC at its 2.18.10 meeting</u>
<u>2</u>	<u>3/18/10</u>	<u>Steve Gravely, Erin Whaley and Mariann Yeager</u>	<u>Revisions based on feedback from the NHIN CC at its 3.18.10 meeting</u>
<u>3</u>	<u>3/27/12</u>	<u>Marcia Gonzales, Edye Taylor and Mariann Yeager</u>	<u>Revised to reflect amended DURSA</u>
<u>4</u>	<u>4/17/12</u>	<u>OPP Task Group</u>	<u>Revised to reflect OPP Task Group input discussed on 4/16/12</u>
<u>5</u>	<u>12/5/12</u>	<u>Mariann Yeager</u>	<u>Revised references to Exchange and tweaked language in section 3 to address Task Group comment</u>
<u>6</u>	<u>12/11/12</u>	<u>Christina Arenas</u>	<u>Editorial Changes</u>
<u>7</u>	<u>8/15/16</u>	<u>Theresa Wiebold</u>	<u>Administrative updates to remove references to Healthway</u>
<u>8</u>	<u>2/2020</u>	<u>Jay Nakashima</u>	<u>Updated language to reflect newest DURSA amendment changes; Updated formatting for consistency and readability</u>

### Date Author Comment

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