

## Operating Policy and Procedure

<b>Subject: Confidential Information Handling</b>		
<b>Status: FINAL – Approved by CC</b>	<b>Policy #: OPP-6</b>	
<b>Effective Date: 8/1/2020</b>	<b>Version: 3.0</b>	<b>Page 1 of 6</b>

### **I. Purpose**

In fulfilling its obligations under the DURSA, the Coordinating Committee may request and receive information from Applicants and Participants. To the extent that such information is labeled by an Applicant or Participant as “Confidential Participant Information,” it will be treated as such by the Coordinating Committee. This policy sets forth the procedure by which the Coordinating Committee will handle Confidential Participant Information.

### **II. Policy**

Each member of the Coordinating Committee is obligated to hold all Confidential Participant Information in confidence and agrees that he or she shall not, during the term of his or her tenure on the Coordinating Committee or thereafter, disclose to any person or entity, nor use for his or her business or benefit, any information obtained in connection with his or her performance of duties as part of the Coordinating Committee. The Coordinating Committee members are obligated to maintain the confidentiality of Confidential Participant Information, except as necessary to fulfill the obligations of the DURSA. The ONC Representative is obligated to maintain the confidentiality of Confidential Participant Information as part of their employment or engagement with ONC.

Any support staff and advisors, who the Coordinating Committee provides access to Confidential Participant Information or in support of the eHealth Exchange, are obligated to maintain the confidentiality of such Confidential Participant Information post and during his/her: employment by, or contractual relationship with Healthway, Inc. (d/b/a/ “The eHealth Exchange” and its “eHealth Exchange support staff”) or an organization represented on the Coordinating Committee.

### **III. Procedure**

1. *Request for Information:* In the exercise of its obligations under the DURSA, the Coordinating Committee may request information from Participants and Applicants for the following reasons:
  - a. Determining whether to admit new Participants to the eHealth Exchange;
  - b. Suspending or terminating Participants in accordance with the DURSA;
  - c. Receiving reports of Adverse Security Events and acting upon such reports in accordance with the DURSA;

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- d. Resolving Disputes between Participants in accordance with the DURSA;
  - e. Determining materiality of proposed new, or changes to existing, Performance and Service Specifications in accordance with the DURSA;
  - f. Developing and amending the Coordinating Committee Operating Policies and Procedures in accordance with the DURSA;
  - g. Managing the amendment of the DURSA in accordance with the DURSA; and
  - h. Fulfilling all other responsibilities delegated by the Participants to the Coordinating Committee as set forth in the DURSA.
2. *Identification of Confidential Participation Information:* Upon receipt of information from Applicants or Participants, the Secretary of the Coordinating Committee will determine whether the information bears a label that indicates that it is Confidential Participant Information. Such labels do not have to say “Confidential Participant Information,” but must indicate the confidential nature of the information. Acceptable labels include, but are not limited to, “confidential,” “proprietary,” and “do not disclose.”
  3. *Participant Requests for Additional Restrictions.* Participants are permitted to request restrictions on the disclosure of their Confidential Participant Information beyond those restrictions provided in the DURSA and this Operating Policy and Procedure. The Coordinating Committee will review all such requests and, in its sole discretion, will determine whether to approve such requests. The Coordinating Committee will notify the Participant of its decision regarding the request.
  4. *Storage of Confidential Information:*
    - a. Confidential Participant Information that is received by the Coordinating Committee in either electronic form or hard copy shall be properly secured to minimize risks to unauthorized access. Access to the systems and storage locations designated for Confidential Participant Information will be limited to Members of the Coordinating Committee and such support staff and advisors who require access to such information for performance of their work, as determined by the Coordinating Committee. On a routine basis, but no less frequently than every six (6) months, the Coordinating Committee or eHealth Exchange support staff will review a list of those who have access to the systems designated for Confidential Participant Information and confirm the accuracy of the list.
    - b. The electronic file name for any Confidential Participant Information will indicate that it is Confidential Participant Information. Electronic files will be renamed, if necessary,

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by eHealth Exchange support staff, when stored on the systems designated for Confidential Participant Information.

- c. Members of the Coordinating Committee will assure that any Participant Confidential Information to which they have access will be retained by them in a way that assures the security of the information
  - d. Members of the Coordinating Committee are required to regularly delete Confidential Participant information that is no longer of use to the process.
  - e. Confidential Participant Information may be submitted electronically per methods approved by the Coordinating Committee.
5. *Retention:* Confidential Participant Information will be retained for the duration of its usefulness as determined by the Coordinating Committee; as required by contract, law, and/or business use; or, until the Coordinating Committee's duties are assigned to any successor organization with responsibility for oversight of the operation and support of the eHealth Exchange. For retention policies specifically related to the DURSA and Joinder agreement, see OPP #8, Sec. III (A).
6. *Use and Disclosure Limitations of Confidential Participant Information:*
- a. Confidential Participant Information will only be used by the Members of the Coordinating Committee to fulfill the Coordinating Committee's obligations under the DURSA. Each Member of the Coordinating Committee will not, during the term of his or her tenure on the Coordinating Committee or thereafter, disclose to any person or entity, nor use for his or her business or benefit, any information obtained in connection with his or her performance of duties a Member of the Coordinating Committee.
  - b. To the extent that the Coordinating Committee shares Confidential Participant Information with third parties that support the operations of the Coordinating Committee (e.g. consultants, legal counsel, advisors, support staff), the Coordinating Committee will ensure that these third parties are contractually bound to the same (or substantially similar) confidentiality restrictions as the Members of the Coordinating Committee.
  - c. If a Member of the Coordinating Committee is required by operation of law to disclose Confidential Participant Information, he or she will promptly notify the Chair of the Coordinating Committee and the Participant or Applicant that provided the Confidential Participant Information. Such notification will include the terms and circumstances surrounding such operation of law. The information in the notification must be sufficient

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to allow the Participant or Applicant to exercise its rights to object to such disclosure. If, after the Participant's or Applicant's objection, the Member is still required by law to disclose the Confidential Participant Information, he or she shall do so only to the minimum extent necessary to comply with the operation of the law and shall request that the Confidential Participant Information be treated as such.

7. *Secure Disposal*: Hard copies and electronic versions of Confidential Participant Information shall be destroyed when such versions no longer require retention under Section 5.
8. *Protected Health Information ("PHI")*: The Coordinating Committee shall make every effort to perform its duties without requesting PHI or through the request, receipt and use of de-identified and/or aggregate data. If the Coordinating Committee determines that PHI is needed for the full exercise of its duties under the DURSA, it may request the needed PHI from the Applicant or Participant. The Applicant or Participant is not obligated to provide PHI to the Coordinating Committee in violation of Applicable Law. Should the Coordinating Committee request and receive PHI, it shall be kept separate from all other information received and/or maintained by the Coordinating Committee and shall be subject to additional restrictions and/or agreements as determined by legal counsel and the submitting Applicant or Participant.

#### **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 or the Coordinating Committee Operating Policies and Procedures.

#### **V. References**

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

- Section 19, Term, Suspension and Termination

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- Section 14.04, Adverse Security Event Notification
- Section 21, Dispute Resolution
- Section 10.03, Performance and Service Specification Change Process
- Section 11, Operating Policies and Procedures
- Section 4.04, Coordinating committee
- Section 5.03, Management Uses
- Section 23.02, Amendment

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

- OPP #1, Participation – Review and Disposition of Applications for Participation
- OPP #2, Coordinating Committee General Operating Procedure
- OPP #3, Changes Suspension Termination
- OPP #4, Change Process-Performance and Service Specifications
- OPP #5, Change Process-Operating Policies and Procedures
- OPP #7, Adverse Security Event Notification

### **VII. Version History Date**

	<b><u>Date</u></b>	<b><u>Author</u></b>	<b><u>Comment</u></b>
1	6/11/09	Randall E. Sermons	<u>Original</u>
2	6/17/09	Randall E. Sermons	Per discussions with Mariann Yeager and Erin Whaley: Confidentiality flows for representatives from ONC and LCW clarified. Clarified applicability of policy to submissions of Confidential Information by Proposed Members. Added notification of Chair of Coordinating Committee in the event of compulsory disclosures. Clarified use of scanning and storing of Confidential Information in a secure area of the Portal. Added legal limitations to disclosures of PHI as well as paragraph on handling of PHI.
3	6/23/09	Randall E. Sermons	Per discussions with Mariann Yeager, Steve Gravely and Erin Whaley: Add "Accepting"

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			Participants as a responsibility of the Coordinating Committee. Delete a request that Participants mark information as confidential to prevent issues with regard to classification of information by Federal Participants. Delete detailed procedures regarding handling of confidential information at meetings and certain other requirements regarding use and deletion of confidential information kept in electronic format.
4	11/29/09	Erin Whaley and Steve Gravely	Revised to conform to final version of the DURSA
5	12/4/09	Erin Whaley and Steve Gravely	Revised to incorporate comments from 12/1/09 OPP Team call
6	12/23/09	Erin Whaley and Steve Gravely	Revised to incorporate comments from 12/8/09 OPP Team call
7	1/25/10	Erin Whaley and Steve Gravely	Revised to incorporate comments from 1/21/10 Coordinating Committee meeting
8	3/21/12		Revised to incorporate changes in the DURSA 5/3/11
9	3/27/12	Maria Gonzales, Edey Taylor and Mariann Yeager	Revised to refine process
10	4/17/12	OPP Task Group	Revised to incorporate Task Group input discussed on 4/16/12
11	12/5/12	M. Yeager, C. Arenas and J. Parker	Revised to reflect the transition post hand-off.
12	12/12/12	Christina Arenas	Editorial Changes
13	8/15/16	Theresa Wiebold	Administrative updates to remove references to Healthway
14	6/2020	Jay Nakashima	Updated language to reflect newest DURSA amendment changes; Updated formatting for consistency and readability