

Operating Policy and Procedure

Subject: How to Comply with DURSA'S Duty to Respond		
Status: Final	Policy #: OPP- #14	
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I. Purpose

The purpose of this Operating Policy & Procedures (OPP) is to inform the eHealth Exchange Coordinating Committee and Participants regarding how section 12 of the DURSA will be implemented in light of the ONC Final Rule on Information Blocking (the "Final Rule"). eHealth Exchange is committed to complying with the Final Rule as Applicable Law as defined in the DURSA.

II. Policy

This policy reiterates how Participants respond to requests for Treatment purposes from another Participant's Treatment queries as defined in the DURSA. "A core principle of eHealth Exchange is that Participants make commitments to the minimum level of data sharing that they will support so that all other Participants can know, and rely on, each Participant's commitment." (See DURSA, Section 12.01(a).) The DURSA also requires all Participants to fully comply with Applicable Law (Section 15.11). The DURSA imposes a "duty to respond" on all Participants in specific situations:

- "Participants that request, or allow their respective Participant Users to request, Message Content for Treatment shall have a corresponding reciprocal duty to respond to Messages that request Message Content for Treatment." (See DURSA, Section 12.01(a).)
- "Each Participant that requests, or allows its respective Participant Users to request, Message Content for Treatment shall Transact Message Content with all other Participants for Treatment, in accordance with Sections 6, 12.01(a) and 14 of this Agreement." (See DURSA, Section 12.01(b).)

III. Procedure

The DURSA expects Participants to respond to queries for Treatment with information that is responsive to the request but recognizes that this may not be possible in every instance. Therefore, the DURSA identifies ways in which a Participant can respond to queries for Treatment if the Participant is not able to provide the information requested. A Participant may respond with one of the following:

1. "**Patient not Found**" (or similar response) if the requested patient couldn't be matched to the responder's Master Patient Index (MPI).
2. "**Unable to Respond**" or similar message if the Message Content that is responsive to the query is not available or cannot be exchanged. If a Participant asserts that it is

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Unable to Respond to a query for Treatment, the burden is on the Participant to have a valid reason that is compliant with Applicable Law.

Applicable Law is defined in the DURSA as “all applicable statutes and regulations of the State(s) or jurisdiction(s) in which the Participant operates, as well as all applicable Federal statutes, regulations, standards and policy requirements” if the Participant is not a federal government agency. There could be legal requirements that prevent a Participant from responding to queries for Treatment. However, Applicable Law also includes the information blocking provisions of the 21st Century Cures Act (Cures) and the applicable regulations promulgated by the Office of the National Coordinator (ONC). The eHealth Exchange shall comply with, and expects each of its Participants to comply with, Applicable Law including, but not limited to, the information blocking provisions of Cures. As noted above, each Participant is responsible for not withholding Treatment information inappropriately and for complying with the information blocking provisions.

IV. Definitions

Information Blocking: The Cures Act¹ defines Information Blocking as “a practice that ... is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information,” **unless such practice is required by law** (e.g., HIPAA), **or it meets an exception established through federal rulemaking**. The Cures Act establishes two different intent requirements for Information Blocking, based on the individual or entity engaging in an Information Blocking practice:

1. A health information technology developer, exchange, or network must know or should know that such practice is likely to interfere with, prevent, or materially discourage access, exchange, or use of EHI;
2. A healthcare provider must know that such practice is unreasonable and likely to interfere with, prevent, or materially discourage access, exchange, or use of EHI.

V. References

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

- Section 12.01, Expectations of Participants
- Section 15.11, Compliance with Laws

¹ 42 U.S.C. § 300jj-52(a)(1).

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"IHI IT Infrastructure Technical Framework, Vol. 2b, (ITI TF-2b): Transactions Part B".
https://www.ihe.net/uploadedFiles/Documents/ITI/IHE_ITI_TF_Vol2b.pdf#nameddest=3_55_Cross_Gateway_Patient_Disc

- Section 3.45, 4.23 Expected Actions - Patient Identifier Cross-reference Manager

VI. Related Policies and Procedures

- OPP #1: Review and Disposition of Applications for Participation
- OPP #3: Participation - Changes, Suspension, Termination
- OPP #12: eHealth Exchange Vendor Participation

VII. Version History

	Date	Author	Comments
1	07/28/2020	Pat Russell, Steve Gravely, Jay Nakashima	Original Version