

# EHEALTH EXCHANGE TEFCA DISPUTE RESOLUTION PROTOCOL

## Scope and Authority

The TEFCA Onboarding and Designation SOP implemented by the RCE requires every Qualified Health Information Network (QHIN) to have a Designated Network Governing Body with the authority to govern the TEFCA Connectivity Services. The eHealth Exchange QHIN Governance Committee (“QGC”) governs the eHealth Exchange QHIN and is responsible for resolving Disputes, as defined in the Common Agreement, that arise involving Participants, Subparticipants and Downstream Subparticipants that are participating in the eHealth Exchange QHIN as well as Disputes between the eHealth Exchange QHIN and another QHIN.

In accordance with eHealth Exchange Operating Policy & Procedures (OPP) #10 (Participant Opt-Out of New Data Sharing Agreements), this protocol applies to all Participants that do not opt-out of the eHealth Exchange QHIN and are thus bound by the TEFCA Terms and Conditions.

## Purpose

The Common Agreement requires all QHINs to resolve Disputes through “informal discussions” before invoking the Dispute Resolution Process created by the Common Agreement. The Dispute Resolution SOP provides details on the process of the Dispute Resolution Process that is administered by the RCE. Each QHIN is also required to have its own Dispute Resolution Process to address Disputes that arise within the QHIN. The eHealth Exchange TEFCA Terms and Conditions make clear that eHealth Exchange Participants shall follow the eHealth Exchange Dispute Resolution Process set forth in the DURSA **except** that Disputes involving an eHealth Exchange QHIN Participant and another eHealth Exchange QHIN Participant that arise exclusively out of the use of the Connectivity Services or a Dispute between the eHealth Exchange QHIN and a Participant may be escalated to the QGC instead of the eHealth Exchange Coordinating Committee. This Protocol will provide specific guidance about how the eHealth Exchange QHIN Dispute Resolution Process will operate.

# EHEALTH EXCHANGE TEFCA DISPUTE RESOLUTION PROTOCOL

## Protocol

The QGC recognizes that it is in its best interest of all parties to resolve Disputes related to the Common Agreement and the TEFCA Terms and Conditions through a collaborative, collegial process rather than through civil litigation. The eHealth Exchange Dispute Resolution Process has been an integral part of the DURSA since it was first created. The eHealth Exchange QHIN will leverage this well-established process to help resolve any disputes that might arise which are related to the TEFCA Connectivity Services. As stated in the eHealth Exchange QHIN Terms and Conditions, Section 14, Participants will follow the existing eHealth Exchange Dispute Resolution Process under the authority of the QGC instead of the eHealth Exchange Coordinating Committee with some modifications as set forth in the Procedure section of this Protocol. Since every eHealth Exchange QHIN Participant will also be an eHealth Exchange Participant, this approach will promote continuity among Participants by using an already established process. Given that the QGC will have between 5 and 11 members, it may be preferable for the QGC to serve as the Dispute Resolution Subcommittee referenced in the DURSA Dispute Resolution Process rather than stand-up a separate subcommittee. The QGC will make this decision when a Dispute has arisen that cannot be resolved through the Informal Conference.

### Immediate Injunctive Relief

A Participant may be relieved of its obligation to participate in the eHealth Exchange TEFCA Dispute Resolution Process if such Participant (i) believes that another Participant's acts or omissions create an immediate threat to the confidentiality, privacy or security of Message Content or will cause irreparable harm to another Party (Participant, Subparticipant or any Downstream Subparticipant and/or their Users, the integrity or operation of the Qualified Technical Framework, or consumer) and (ii) pursues immediate injunctive relief against such other QHIN Participant in a court of competent jurisdiction. The QHIN Participant pursuing immediate injunctive relief must provide written notification to the QGC of such actions within twenty-four (24) hours of filing for injunctive relief and of the result of the action within twenty-four (24) hours of learning the same.

If injunctive relief is not granted and the QHIN Participant seeking such relief chooses to pursue the Dispute, the QHIN Participants must then submit to the Dispute Resolution Process as outlined in this Protocol.

### Activities during Dispute Resolution Process

Pending resolution of any Dispute under this Protocol, the QHIN Participants agree to fulfill their responsibilities in accordance with this Protocol, unless the Participant exercises its right to cease Transacting Message Content in accordance with the TEFCA Enforcement Protocol.

# EHEALTH EXCHANGE TEFCA DISPUTE RESOLUTION PROTOCOL

## Implementation of Agreed Upon Resolution

If, at any point during the Dispute Resolution Process, all QHIN Participants to the Dispute accept a proposed resolution of the Dispute, the QHIN Participants agree to implement the terms of the resolution in the agreed upon timeframe.

## Reservation of Rights

If, following the Dispute Resolution Process, in the opinion of any involved QHIN Participant, the Dispute Resolution Process failed to adequately resolve the Dispute, the QHIN Participant(s) may pursue any remedies available to it in a court of competent jurisdiction.

The QHIN Governance Committee and management will conduct periodic reviews to evaluate and identify improvements to the eHealth Exchange QHIN Dispute Resolution process.

## Procedure

### Disputes with another QHIN

The eHealth Exchange QHIN may have a Dispute with another QHIN over matters related to the TEFCA Connectivity Services. Such Dispute may be raised by the eHealth Exchange QHIN or another QHIN or even the Participants, Subparticipants or Downstream Subparticipants of a QHIN. These Disputes are governed through the RCE Dispute Resolution Process as set forth in the Common Agreement and the Standard Operating Procedure: Dispute Resolution. The QGC is responsible for following this process and identifying an appointed designee to communicate with the RCE on the QGC's behalf.

### Participant Disputes

If an eHealth Exchange Participant has a Dispute : (a) with another eHealth Exchange QHIN Participant, or on behalf of their Subparticipants and Downstream Subparticipants, that arise exclusively out of the use of the Connectivity Services; or (b) with the eHealth Exchange QHIN pertaining to the interpretation and/or enforcement of the TEFCA Materials, including disputes involving suspension of the Participant's, or on behalf of their Subparticipants and Downstream Subparticipants, use of the Connectivity Services or termination of Participant's participation in the eHealth Exchange QHIN as set forth in the TEFCA Terms and Conditions Section 13.3.2, then the Participant shall engage in the eHealth Exchange QHIN Dispute Resolution Process. As previously noted in this Protocol, this is the Dispute Resolution Process included in the DURSA at Attachment 6 and restated below.

## **EHEALTH EXCHANGE TEFCA DISPUTE RESOLUTION PROTOCOL**

1. When a Dispute arises, a Participant must send written notice to the other Participant(s) involved in the Dispute. The notice must contain a summary of the issue as well as a recommended resolution. The Participant must send a copy of the notice to the QGC.
2. Within thirty (30) calendar days of receiving the notice, the Participants are obligated to meet and confer with each other at least once, in good faith and at a mutually agreeable location (or by telephone/teleconference/videoconference), to try to reach a resolution (the "Informal Conference"). If the Participants reach a resolution at the Informal Conference, they shall provide notification to that effect to the QGC.
3. If the Participants are unable to participate in an Informal Conference during the thirty (30) calendar day period or fail to reach resolution at the Informal Conference, they have ten (10) business days following the end of the thirty (30) calendar day period or the date of the Informal Conference, respectively, in which to escalate the Dispute to the QGC in writing. The QGC has the discretion to either have the QGC serve as the Dispute Committee referred to in the DURSA Dispute Resolution Process or appoint a subcommittee of the QGC to serve as the Dispute Committee. In making this decision, the QGC shall take into consideration the complexity of the issues in the Dispute and the other matters that the QGC is working on at the time.
4. QGC members are required to declare any conflicts of interest that the member does or might have with any party to the Dispute or the subject matter of the Dispute. Once a QGC member declares a potential conflict, the remaining QGC members will decide amongst themselves whether the member must recuse themselves from further participation in the Dispute Resolution Process based upon any conflict of interest. Recusal shall be made on a case-by-case basis.
5. Once a Participant escalates a Dispute to the QGC, the QGC has thirty (30) calendar days in which to convene a meeting of the involved Participants (the "Dispute Committee Meeting"). This meeting can be convened virtually or in-person if all of the parties agree on a location for the in-person meeting. During the Dispute Committee Meeting, each Participant will have the opportunity to present its version of the Dispute and provide any information that it believes is pertinent to the QGC's decision.
6. The QGC has the ability to request additional information from the Participants to help it make its determination. The QGC, however, does not have the authority to compel a response or the production of testimony or documents by the Participants. To the extent that the Participants do respond to requests of the QGC by producing documents, Participants have the right to mark the documents as "Confidential Participant Information" and the QGC will treat those documents as Confidential Participant Information.

## EHEALTH EXCHANGE TEFCA DISPUTE RESOLUTION PROTOCOL

7. In carrying out its duties in this Dispute Resolution Process, the QGC may:
  - a. Consult with its legal counsel to advise it on the law relevant to matters before it.
  - b. Consult with or engage subject matter experts, as deemed necessary by the QGC to advise it on matters involved in a Dispute if the QGC decides that it would benefit from additional expertise.
8. The QGC is encouraged to develop an appropriate and equitable resolution to each submitted Dispute, taking into consideration all available evidence, the goals of the TEFCA Terms and Conditions, and other relevant considerations. The QGC also has the authority to impose sanctions upon an eHealth Exchange QHIN Participant that is found to be in breach of the Terms and Conditions. These sanctions include developing corrective action plans, suspension of participation rights, and termination of participation rights. The type of sanction will depend on the nature and severity of the breach and shall be handled consistently with the Enforcement Protocol.
9. Within fifteen (15) calendar days of the Dispute Committee Meeting, the QGC must issue a written recommendation for resolution, including an explanation of the basis and rationale of its recommendation.
10. Within seven (7) calendar days of receiving the final resolution from the QGC, the eHealth Exchange QHIN Participants must determine whether they accept the resolution or if they intend to pursue the matter further outside of the Dispute Resolution Process (e.g., file a legal claim), and the eHealth Exchange QHIN Participants must notify the QGC of their determination.
11. The QGC must also send a written summary of the resolution of the TEFCA Dispute to all eHealth Exchange QHIN Participants. The summary will not identify the eHealth Exchange QHIN Participants involved, but it will contain sufficient detail about the resolution to serve as an instructive resource for other eHealth Exchange QHIN Participants.
12. In no case will an eHealth Exchange QHIN Participant be required to disclose PHI in violation of Applicable Law as part of its participation in the Dispute Resolution Process. The decision to not disclose PHI will not be held against an eHealth Exchange QHIN Participant in the Dispute Resolution Process.

### Suspension Disputes

In the event that the RCE suspends Participant's participation in QHIN-to-QHIN exchange, including where the RCE requires that the eHealth Exchange QHIN suspend Participant's use of the Connectivity Services, Participant shall have the right to petition the QGC to give approval for the eHealth Exchange's

# EHEALTH EXCHANGE TEFCA DISPUTE RESOLUTION PROTOCOL

QHIN representative to work with Participant to initiate the TEFCA Dispute Resolution Process on behalf of the Participant.

1. Participant must submit its written petition, describing Participant's basis for disputing its suspension by the RCE, to the QGC within ten (10) calendar days of such suspension.
2. The QGC shall provide a written response to Participant within fourteen (14) calendar days of receipts of Participant's petition.
3. If the QGC approves the petition, the matter may proceed, facilitated by the eHealth Exchanges QHIN representative or designee and must adhere to the TEFCA Dispute Resolution Process.

## Termination Disputes

A Participant may submit to the Dispute Resolution Process if its use of the Connectivity Services is terminated by the QGC. If the termination involves a Participant's Subparticipant(s) or Downstream Subparticipant(s), the Participant may submit the termination to the Dispute Resolution Process if it believes that the termination was not justified. If Participant's participation under Section 13.2.3 of the TEFCA Terms and Conditions, this termination is not subject to the Dispute Resolution Process.

Subparticipants and Downstream Subparticipants.

If a Participant's Subparticipants or Downstream Subparticipants are suspended or terminated by decision of the QGC, then they may petition their Participant to submit their objection to the Dispute Resolution Process. The Participant will carefully consider whether this is appropriate. The Participant will have the final authority to determine whether to submit an objection to the Dispute Resolution Process.

## Definitions

All capitalized terms, if not defined herein, shall have the same meaning as set forth in the TEFCA Terms or the TEFCA Protocols.

## References

"TEFCA Terms and Conditions"

- Section 14, QHIN Participation Disputes

"eHealth Exchange TEFCA Enforcement Protocol"

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# EHEALTH EXCHANGE TEFCA DISPUTE RESOLUTION PROTOCOL

## Related Protocols

eHealth Exchange TEFCA Enforcement Protocol

<b>Date</b>	<b>Author</b>	<b>Comments</b>
November 2023	Pat Russell/ Steve Gravely	New Protocol for eHealth Exchange QHIN