

# EHEALTH EXCHANGE TEFCA ENFORCEMENT 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 the enforcement of the TEFCA Terms and Conditions including, when necessary, imposing sanctions on Participants, Subparticipants and Downstream Subparticipants that are not in compliance with the TEFCA Terms and Conditions.

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 purpose of this Protocol is to identify how the QGC will enforce the TEFCA Terms and Conditions that are applicable to all Participants, Subparticipants and Downstream Subparticipants that participate in the eHealth Exchange QHIN.

## Protocol

Compliance with the eHealth Exchange TEFCA Terms and Conditions is mandatory for Participants, Subparticipants and their Downstream Subparticipants as specified in the Terms and Conditions. When non-compliance is suspected, it must be investigated to determine the facts and evaluate the appropriate response that the QHIN Governance Committee should take. The QGC and management may discover compliance concerns through a variety of ways including, but not limited to, by receiving complaints from Participants or via its own monitoring of activity in the eHealth Exchange QHIN network. Participants are expected to make the QGC aware of concerns that they have about possible non-compliance by themselves, another Participant, their Subparticipants or their Downstream Subparticipants.

If the QGC determines that a Participant, a Subparticipant or a Downstream Subparticipant has failed to comply with the TEFCA Terms and Conditions, the QGC must determine what steps should be taken to address the non-compliance. This may take the form of imposing a Corrective Action Plan, Suspension or Termination of a Participant. These are more fully described below.

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## **Corrective Action Plan:**

If the QGC determines that an identified non-compliance: (i) does not affect the use of the Connectivity Services; (ii) can be cured in a reasonable amount of time, but no longer than thirty (30) days, and; (iii) does not create risk to the stability or security of the eHealth Exchange QHIN network, then a written Corrective Action Plan (CAP) will be explored with the Participant who is found to be out of compliance. If a Corrective Action Plan is deemed an appropriate enforcement step by the QGC, then a Corrective Action Plan will be developed by the eHealth Exchange QHIN management in consultation with the Participant and presented to the QGC for review and approval once the QGC is satisfied with the Corrective Action Plan. The Corrective Action Plan will include a description of the non-compliance, specific steps that the Participant, or its Subparticipants or Downstream Subparticipants as appropriate, will take to cure the non-compliance and specific time lines for implementing these steps. Management will monitor the Participant's progress implementing the Corrective Action Plan and keep the QGC informed of Participant's progress. If Participant fails to comply with the Corrective Action Plan, management will work with Participant to identify why Participant is failing to comply with the Corrective Action Plan and modify the Plan if possible. Any modifications will be memorialized in the Plan and presented to the QGC for their review and approval. If there is not a reasonable modification that can be made, then the QGC may decide to suspend or terminate the Participant, any of its Subparticipants or Downstream Subparticipants that are involved from participation in the eHealth Exchange QHIN.

## **Suspension**

Pursuant to TEFCA Terms and Conditions Section 13.1.2, the QGC may suspend a Participant, or any of its Subparticipants or Downstream Subparticipant(s) listed in the eHealth Exchange QHIN directory from participating in the eHealth Exchange QHIN Connectivity Service if: (a) there is an alleged violation of the eHealth Exchange Terms and Conditions or other Framework Agreement or of Applicable Law by the respective party/parties; (b) there is a cognizable threat to the security of information that the RCE reasonably believes is TEFCA Information (TI) transmitted pursuant to the eHealth Exchange TEFCA Terms and Conditions or other such Framework Agreement or to the infrastructure of the respective party, the eHealth Exchange, or the RCE; (c) Participant fails to implement a Corrective Action Plan as required; or, (d) suspension is in the interests of national security as directed by an agency of the United States government. The eHealth Exchange QHIN shall comply with the terms of the DURSA with respect to suspension. The QGC has the ability to impose a suspension summarily in the specific circumstances set forth in the Procedure Section of this Protocol (Summary Suspension).

## **Termination**

Pursuant to TEFCA Terms and Conditions Section 13.2.2, the QGC may terminate use of the Connectivity Services by a Participant, or any of its Subparticipants or Downstream Subparticipant(s) listed in the eHealth Exchange QHIN Directory in the event such Participant, Subparticipant(s) or any Downstream

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Subparticipant(s) has been suspended in accordance with TEFCA Terms and Conditions : (a) the eHealth Exchange QGC determines that the Participant, Subparticipant(s) or any Downstream Subparticipant(s) acts or omissions created an imminent threat or were likely to cause irreparable harm to another party or to the Connectivity Services; b) the eHealth Exchange QGC determines that Participant's, or any Subparticipant or Downstream Subparticipant, non-compliance is not reasonably capable of being cured during a suspension ; or (c) Participant's , Subparticipants' or any Downstream Subparticipants' suspension is not lifted within sixty(60) days of taking effect.

The QHIN Governance Committee and management will conduct periodic reviews to evaluate and identify improvements to the TEFCA Enforcement process.

## Procedure

### A. Suspension

#### Mandatory Suspension

The eHealth Exchange QGC **must** suspend eHealth Exchange QHIN Participant(s), Subparticipant(s) or Downstream Subparticipant(s) that are listed in the eHealth Exchange QHIN Directory if directed to do so by the RCE based on the RCE's determination that suspension is warranted based on any of the circumstances described in the TEFCA Terms and Conditions subsections 13.1.1 (a)-(c). The QGC will be informed of the RCE's decision by the eHealth Exchange Executive Director, or their designee that the RCE has mandated suspension.

- I. Each Participant shall ensure that in their Participant-Subparticipant Agreements, that each Subparticipant agrees and acknowledges that, in addition to the suspension authority of the RCE in TEFCA Terms and Conditions, Section 13.1.1 and the QGC in the TEFCA Terms and Conditions, Section 13.1.2, the Participant has the authority to suspend its Subparticipants and any Downstream Subparticipant(s) right to engage in any activities that utilize the eHealth Exchange QHIN Connectivity Services if any of the circumstances described in TEFCA Terms and Conditions, Subsection 13.1.1 (a)-(c) have occurred.
  - a. The Participant must exercise the right to suspend if directed to do so by the QGC.
  - b. The Participant may exercise the right to suspend based on its own determination that any of the circumstances described in TEFCA Terms and Conditions, Subsections 13.1.1 (a)-(c) occurred with respect to its Subparticipant(s) or Downstream Subparticipant(s).

#### Discretionary Suspension

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The QGC **may** suspend eHealth Exchange QHIN Participant(s), Subparticipant(s) or Downstream Subparticipant(s) that are listed in the eHealth Exchange QHIN Directory based on the QGC's determination that suspension is warranted based on any of the circumstances described in the TEFCA Terms and Conditions subsections 13.1.1 (a)-(c) or Participant, Subparticipant(s) or Downstream Subparticipant(s) fails to comply with a Corrective Action Plan.

Upon receipt of a complaint, report or other information that causes the QGC to question whether a Participant, Subparticipant(s) or Downstream Subparticipant(s) has engaged in acts or omissions that constitute grounds for suspension as identified in Section 13.1.1(a)-(c), the TEFCA Terms and Conditions, Section 13.1.2, gives the QGC the authority to investigate the complaint, report or other information and determine whether such Participants, Subparticipant(s) or Downstream Subparticipant(s) should be suspended. Any suspensions imposed under this Protocol shall remain in effect until the suspended Participant(s), Subparticipant(s) or Downstream Subparticipant(s) are either reinstated or terminated by the QGC in accordance with the TEFCA Terms and Conditions and this Protocol.

- II. Upon learning that a Participant, Subparticipant(s) or Downstream Subparticipant(s) may have engaged in acts or omissions that meet the criteria for suspension set forth in Section 13.1.1(a)-(c), the eHealth Exchange QGC shall initiate an investigation of the complaint, report or other information.
  - a. The QGC will direct management to immediately begin investigating the facts to determine whether there is evidence that demonstrates that a Participant(s), Subparticipant(s) or Downstream Subparticipant(s) did engage in acts or omissions that warrant a suspension.
  - b. Management and staff will use all deliberate speed in its investigation and present their findings in writing to the QGC within five (5) business days of being directed by the QGC to start an investigation. It is imperative that every Participant(s), Subparticipant(s) and their Downstream Subparticipant(s) fully and timely cooperate with management and staff to quickly and thoroughly conduct their investigation in order to meet this timeline. Failure to fully and timely cooperate will be considered a violation of each Participant(s)', Subparticipant(s)' and Downstream Subparticipant(s)' obligations under the Framework Agreements.
  - c. If the QGC finds, based upon the investigative report, that there is evidence to warrant a suspension, then the QGC will consider this evidence and will decide whether a suspension is warranted. The QGC will act with all deliberate speed, but no longer than five (5) business days, once it receives the investigative report to determine whether to impose a suspension on any Participant(s), Subparticipant(s) or Downstream Subparticipant(s).
- III. If the QGC decides to impose a suspension, it will immediately direct eHealth Exchange QHIN management to take appropriate technical actions necessary to carry

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out the suspension, which may include but is not limited to, suspension of the eHealth Exchange QHIN Participant's Digital Credentials. As soon as reasonably practicable after suspending an eHealth Exchange QHIN Participant, but in no case longer than twenty-four (24) hours, eHealth Exchange QHIN management will provide the suspended Participant with a written summary of the reasons for suspension and notify all other eHealth Exchange QHIN Participants of the suspension.

IV. If the suspension is for a Participant's Subparticipant(s) or Downstream Subparticipant(s) listed in the eHealth Exchange QHIN directory, then eHealth Exchange QHIN management will notify the Participant(s) to take the appropriate technical actions necessary to carry out the suspension which may include but not be limited to, suspension of the QHIN Subparticipant(s) Digital Credentials. The Participant is required to effectuate such suspension as soon as practicable and not longer than within twenty-four (24) hours of the QGC having directed the suspension, unless the QGC permits a longer time to which to effectuate the suspension.

V. The suspended Subparticipant(s) or Downstream Subparticipant(s) must provide their Participant and the eHealth Exchange QHIN Governance Committee with a written plan of correction or an objection to the suspension within three (3) business days of its receipt of the written summary of the suspension, or if such response is not reasonably feasible within the three (3) day timeframe, a request for an extension and the reason for the request. The eHealth Exchange QHIN Governance Committee will review and make a determination if the request is reasonable.

## Summary Suspension

I. If there is credible evidence that a suspension must be implemented immediately in the opinion of the eHealth Exchange QHIN management, then management shall consult with the QGC Chairperson about imposing a Summary Suspension on a QHIN Participant(s), Subparticipant(s) or Downstream Subparticipant(s). If the Chairperson determines that immediate action is required because a QHIN Participant(s), Subparticipant(s) or Downstream Subparticipant(s) acts or omissions are creating an immediate threat or will cause irreparable harm to another party, then the Chairperson may direct management to issue a Summary Suspension of a QHIN Participant(s), Subparticipant(s) or Downstream Subparticipant(s).

a. If the act or omission is by a eHealth Exchange QHIN Participant, the Chairperson shall direct eHealth Exchange QHIN management to take all appropriate technical actions necessary to carry out the suspension from the eHealth Exchange QHIN Connectivity Services which may include, but are not limited to, suspension of the eHealth Exchange QHIN Participant's Digital Credentials;

b. (b) If the act or omission is by a eHealth Exchange QHIN Subparticipant(s) or Downstream Subparticipant(s), then the Chairperson shall direct eHealth Exchange

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management to notify the eHealth Exchange QHIN Participant(s) that are affiliated with these Participant(s) or Downstream Subparticipant(s) to take all appropriate technical actions necessary to carry out the suspension from the eHealth Exchange QHIN Connectivity Service which may include, but are not limited to, suspension of the Digital Credentials for any Subparticipant(s) or Downstream Subparticipant(s).

- c. The eHealth Exchange QHIN management shall notify, in writing, the suspended eHealth Exchange QHIN Participant of the Summary Suspension in writing within two (2) hours of the Summary Suspension being ordered by the Chairperson. This written notice shall be sent to the individual designated by the QHIN Participant to receive notice. The notice shall provide an explanation of the reasons for suspension and inform the QHIN Participant of the scope of the suspension, i.e., whether it affects the QHIN Participant or its Subparticipant(s) or their Downstream Subparticipants(s). If the Summary Suspension is applicable only to the QHIN Participant's Subparticipant(s) or Downstream Subparticipant(s), then the notice shall direct the QHIN Participant to immediately take all action required to implement the Summary Suspension and shall notify the eHealth Exchange QHIN management what those actions are and confirm that they have been taken.
- d. The Chairperson shall call a special meeting of the eHealth Exchange QGC to review the basis for the Summary Suspension and formally act to either uphold the Summary Suspension and convert it into a full Suspension or end the Summary Suspension if the QGC finds that the Summary Suspension was improperly imposed or the basis for imposing the Summary Suspension no longer exists. The QGC shall formally act within five (5) business days of the Summary Suspension being imposed by the Chairperson. If the eHealth Exchange QHIN Governance Committee affirms or modifies the suspension, it will direct eHealth Exchange QHIN support staff to notify all other eHealth Exchange QHIN Participants of the suspension in writing.

## **Plan of Correction:**

For any suspension, the Participant shall provide the QGC with a written plan of correction which shall describe the steps that the eHealth Exchange QHIN Participant(s), Subparticipant(s) or Downstream Subparticipant(s) will take to address, mitigate and remediate the issue(s) that caused the RCE or the QGC to determine that a suspension was appropriate and include a timeframe for taking these steps. The written plan of correction must be submitted to the QGC within thirty (30) days of the notice of suspension. The QGC will review the plan of correction and determine whether to accept or reject it. .

If the QGC rejects the plan of correction, it will direct management to work in good faith with the Participant to develop a mutually acceptable plan of correction. If the suspension is directed at any

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Subparticipant(s) or Downstream Subparticipant(s), management will work in good faith directly with those Subparticipant(s) or Downstream Subparticipant(s) to develop an acceptable plan of correction that the QGC will accept. The Participant will be involved in this work with its own Subparticipant(s) or Downstream Subparticipant(s).

## Objections

If a Participant believes that it has been suspended in violation of this Protocol, it can submit its suspension to the eHealth Exchange QHIN Dispute Resolution Process. If the suspension is directed at any Subparticipant(s) or Downstream Subparticipant(s), then they will ask their Participant to submit their objection to the Dispute Resolution Process and the Participant will carefully consider whether this is appropriate. The Participant will have the authority to determine whether to submit an objection to the Dispute Resolution Process.

## Reinstatement

- I. Any suspended Participant(s), Subparticipant(s) or Downstream Subparticipant(s) must keep the QGC informed of their progress towards completing the plan of correction. Any Subparticipant(s) or Downstream Subparticipant(s) that are subject to suspension shall report to their Participant on their progress towards completing the plan of correction and the Participant shall report this to the QGC. Once a suspended Participant(s), Subparticipant(s) or Downstream Subparticipant(s) has completed its plan of correction, it shall notify the QGC in writing of how it has completed its plan of correction. The QGC will review this notice within three (3) business days of receiving it and determine whether the plan of correction has been completed and whether the suspension can be ended. When the QGC determines that the plan of correction has been completed, the QGC will direct management to take appropriate technical actions necessary to reinstate the suspended Participant's ability to participate in the eHealth Exchange QHIN Connectivity Service. If the suspension was for a Subparticipant(s) or Downstream Subparticipant(s) of a Participant, then Participant will be notified to take appropriate technical actions necessary to reinstate the Subparticipants or Downstream Subparticipants ability to participate in the eHealth Exchange QHIN Connectivity Service.
- II. If the QGC is not satisfied that the plan of correction has been completed, it will inform the Participant of the deficiencies. The Participant for themselves or on behalf of their Subparticipant(s) or Downstream Subparticipant(s) may submit additional evidence that addresses such deficiencies, or the Participant may terminate its or their Subparticipant(s) or Downstream Subparticipant(s) participation in the eHealth Exchange QHIN Connectivity Service.

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## Termination

- I. Termination of eHealth Exchange QHIN participation by eHealth Exchange QHIN Participant:
  - a. The eHealth Exchange QHIN Participant may terminate its participation in the eHealth Exchange QHIN Connectivity Service, at any time, by providing the QGC at least thirty (30) days' written notice that Participant wishes to opt out of continued participation in the eHealth Exchange QHIN Connectivity Service. This notice will be considered provided if it is in writing and delivered to:  
[administrator@ehealthexchange.org](mailto:administrator@ehealthexchange.org).
  - b. Opting out of participation in the eHealth Exchange QHIN Connectivity Service shall have no effect on the Participants' participation in the eHealth Exchange with respect to any non-TEFCA activities, and all other agreements between Participant and the eHealth Exchange, including but not limited to the DURSA, shall remain in full force and effect.
  - c. Termination of Participant's participation in the eHealth Exchange for any reason and by either party, shall automatically terminate Participant's participation in the eHealth Exchange QHIN Connectivity Service with no further action by either party.
  - d. Participant shall be solely responsible for communicating any termination under the TEFCA Terms and Conditions Section 13.2, including any downstream effects thereof, to the Participants' Subparticipants.
- II. Termination of eHealth Exchange QHIN Participation by the eHealth Exchange QGC :
  - a. The QGC may terminate Participant's participation in the eHealth Exchange QHIN Connectivity Service for the reasons set forth in Section 13.2.3 of the TEFCA Terms and Conditions and with notice set forth below:
    - i. If Participant has been suspended and the QGC determines that Participants', Subparticipants' or Downstream Subparticipants' acts or omissions created an imminent threat or were likely to cause irreparable harm to another party or to the Connectivity Services;
    - ii. If the QGC determines that the cause for the suspension is not reasonably capable of being cured after further investigation; or
    - iii. If the suspension is not lifted within sixty (60) days of taking effect.
  - b. In the event that a Participant, Subparticipant(s) or Downstream Subparticipant(s) are terminated, the QGC shall direct management to (i) issue a final written notice of termination; (ii) take appropriate technical actions necessary to carry out the termination including, but not limited to, termination of the Participant's Digital Credentials; and (iii) notify all other TEFCA QHINs and eHealth Exchange QHIN Participants of the termination. It is the responsibility of the Participant to inform their affected Subparticipant(s) and Downstream



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Subparticipant(s) of the termination and to take all appropriate technical actions necessary to carry out the termination from the eHealth Exchange QHIN Connectivity Service.

- III. A Participant may submit to the Dispute Resolution Process if its use of the Connectivity Services is terminated by the QGC pursuant to II above. If the termination involves a Participants' 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 13.2.4 of the TEFCA Terms and Conditions, this termination is not subject 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 13, Suspension & Termination

"eHealth Exchange TEFCA Dispute Resolution Protocol"

## Related Protocols

eHealth Exchange TEFCA Dispute Resolution Protocol

Date	Author	Comments
November 2023	Pat Russell/ Steve Gravelly	New Protocol for eHealth Exchange QHIN