

HEALTH INFORMATION TECHNOLOGY EXCHANGE OF CONNECTICUT

POLICY AND PROCEDURE

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Policy Name/Subject: HITE-CT CONSUMER AUTHORIZATION AND CONSENT POLICY V1.0	Policy Number: 5	Approved By: HITE- CT Board
Approval Date: 11-21-2011	Effective Date: 11-21- 2011	Revision Date(s): 11-21- 2011

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PURPOSE:

The purpose of the policy is to define the circumstances in which a consumer can permit or withhold disclosure of HITE-CT accessible health information.

10 **DEFINITIONS:**

Authorization

The granting of rights, which includes the granting of access based on access rights.

Business Associate

15 A person or entity that performs certain functions or activities for, or provides services to, a Covered Entity (as that term is defined in the Health Insurance Portability and Accountability Act of 1996) that involve the use or disclosure of Protected Health Information.

[Data subject's] consent

20 Any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed.[ISO IS 22857]

Data Use and Reciprocal Support Agreement (DURSA)

25 A comprehensive agreement that governs the exchange of health data between participants in HITE-CT.

Emergency Access

30 Access to data for the provision of care where threat of injury or death requires special permissions in order to ensure uninterrupted and urgent treatment. [SEE Consent policy for details surrounding permissions].

Healthcare Consumer (Individual)

35 Person that is the receiver of health related services and that is a person in a health information system. Any person who uses or is a potential user of a health care service, subjects of care may also be referred to as patients, health care consumers or subject of cares. [ISO TS22220]. In the US, this may be referenced as an 'individual', which means the person who is the subject of protected health information.

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Health Information Exchange Nodes (HIE Nodes)

HIE nodes are those systems (Electronic Medical Records, Public Health Information Systems, Infrastructure systems) that are connected to HITE-CT systems.

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45 **HITE-CT Infrastructure Service Provider**
The entity operating and managing the core services supporting the HITE-CT systems (e.g. Provider Registry, Patient Identity Cross Reference Index Manager, Audit Record Repository, Document Registry, Document Repository, etc.).

50 .
May
Permits the action to happen, but does not require it.

Participating Health Care Subscriber (PHCS)
55 Any healthcare institution or healthcare professional that has executed an effective Data Use and Reciprocal Support Agreement (DURSA) with HITE-CT. See Member List (www.hitect.org/members).

60 **Protected Health Information (PHI)**
Individually identifiable personal information in any form or medium about the past, present or future physical or mental health or condition of an individual, or the past, present or future payment for the provision of healthcare to an individual, [pursuant to federal and state law]. 45 CFR 160.103

65 **Sensitive PHI**
PHI Subject to heightened confidentiality requirements in compliance with all federal and state laws as amended from time-to-time (HIV, substance abuse and mental health records).

Sensitivity
70 Measure of importance assigned to information to denote its need for protection. [ISO 13606-4]

Shall
The action must be taken.

75 **Should**
It is a recommendation that an action ought to be done, but it is not required.

Special Notice
80 Notice given to patients by a Participating Health Care Subscriber explaining HITE-CT and the patient's rights regarding disclosure of PHI from HITE-CT systems.

SCOPE/APPLICABILITY:
This policy applies to HITE-CT, to all persons and organizations who have access to HITE-CT managed health records, including those connected to the HITE-CT (PHCSs), their Business Associates, as well as any subcontractors of Business Associates that perform functions or provide services involving the use and disclosure of PHI, the HITE-CT Infrastructure Service Provider, and any other subcontractors of HITE-CT. This policy applies to all Protected Health Information (PHI) provided to or retrieved from the HITE-CT systems.

90 **POLICY:**

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Collection of Health Information into HITE-CT systems

- 95 • PHI may flow from all participating providers for all of the providers’ patients, or for a subset of the provider patients as determined by the provider (to allow for a staged implementation) into the HITE-CT systems once notification is provided to the patient along with the option to opt out of the health information exchange.
- 100 • The HITE-CT will enter into a business associate agreement with each PHCS that addresses all HIPAA and federal and State law issues, including but not limited to, inappropriate and appropriate use of the HITE-CT systems and consequences of misuse. The business associate agreement will meet the requirements of HIPAA and also will be included as part of a Data Use and Reciprocal Support Agreement (DURSA), setting forth the terms and conditions for participation in HITE-CT information exchanges.

Disclosure of Health Information from HITE-CT systems

- 105 • HITE-CT systems support disclosures of health information in accordance with the HIPAA Security Rule. [45 CFR 164 Subpart B], which, generally speaking, allows a provider to disclose PHI for treatment, payment and healthcare operations without patient authorization; however, certain information subject to heightened confidentiality (i.e. HIV, substance abuse, mental health) may require patient authorization prior to it being disclosed for these purposes. The healthcare consumers have the option to opt out of the health information exchange unless a patient has signed a form requesting that his or her PHI not be disclosed by HITE-CT systems, HITE-CT systems will disclose PHI that is not Sensitive PHI for treatment, payment and health care operations as permitted by HIPAA, subject to a specific restriction on disclosure agreed to by a provider. Disclosure of PHI will be determined in accordance with existing federal and State laws governing such disclosure.
- 115 • If a patient signs a form requesting that his or her PHI not be disclosed by HITE-CT systems, the patient’s opt-out of HITE-CT systems disclosures is global. No PHI of a patient who has opted out will be disclosed to any party by the HIE, except as required by law (i.e. public health reporting requirements, etc.). In addition, even if the patient has opted out of HITE-CT managed health record disclosures, the HITE-CT system may allow for disclosures of PHI in emergency treatment situations. Any disclosure of PHI in an emergency treatment situation will be accompanied by heightened auditing to ensure an emergency situation existed.
- 120 • Disclosure of Sensitive PHI (for HIV, substance abuse, mental health, etc.) will be determined according to existing federal and State laws governing such disclosure.
- 125 • Sensitive PHI will be disclosed by HITE-CT systems only if a proper authorization is on file with HITE-CT systems in the form of a registered Basic Patient Privacy Consent (BPPC) conformant document identifying the policy object identifier (OID) associated with the sensitivity type. A standard form authorization that is compliant with applicable federal and State law will be developed for HITE-CT.
- 130 • The provider who transmits the PHI to HITE-CT systems will be responsible for identifying any Sensitive PHI prior to transmission. Under current law, prior to disclosing PHI from the medical record, providers must identify any Sensitive PHI in the medical record and determine whether disclosure of such Sensitive PHI is permitted by law. The identification of the Sensitive PHI prior to transmission to HITE-CT systems, and therefore in advance of disclosures from HITE-CT systems, is comparable to the review that the provider is required to undertake prior to disclosure from a medical record today. HITE-CT systems will adopt
- 135 the provider’s identification of Sensitive PHI. HITE-CT may offer transformation services to

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assist the PHCS with the identification of Sensitive PHI based upon information source on a case-by-case basis.

- 140 • A provider who agrees to a restriction requested by a patient must convey such restriction to the HITE-CT systems in the form of a registered Basic Patient Privacy Consent (BPPC) conformant document identifying the policy object identifier (OID) associated with the sensitivity type.
- 145 • HITE-CT will check facility and individual authors, and author roles. If these are psychiatric or substance abuse related document sources, then these records SHALL be identified as sensitive in the form of a registered Basic Patient Privacy Consent (BPPC) conformant document identifying the policy object identifier (OID) associated with the sensitivity type.
- 150 • HITE-CT will check problem lists. If these indicate HIV related problems, then these records SHALL be identified as sensitive in the form of a registered Basic Patient Privacy Consent (BPPC) conformant document identifying the policy object identifier (OID) associated with the sensitivity type.
- 155 • HITE-CT will check orders, results, and procedures. If these indicate genetic related problems, then these records SHALL be identified as sensitive in the form of a registered Basic Patient Privacy Consent (BPPC) conformant document identifying the policy object identifier (OID) associated with the sensitivity type.
- Disclosure SHALL be restricted to those purposes defined by the purpose of use policy

Patient Education

- 160 • Each patient or their legally authorized agent will receive a notice from their provider explaining the HITE-CT services and the patient’s rights regarding disclosure of PHI from the HITE-CT systems (“Special Notice”) at the patient’s first visit following the provider’s participation as a HITE-CT PHCS. The Special Notice will:
 - Be required to be provided by a provider to a patient or their legally authorized agent (like a Notice of Privacy Practices (“NPP”) under HIPAA).
 - Be combined with an opt-out form for a patient or their legally authorized agent to elect not to have his or her PHI disclosed by the HIE.
 - Include a telephone number and website to obtain more information.

Policy Maintenance

The Legal and Policy Committee is responsible for monitoring and maintenance of policies