

# HEALTH INFORMATION TECHNOLOGY EXCHANGE OF CONNECTICUT

## POLICY AND PROCEDURE

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Policy Name/Subject: HITE-CT CONSUMER RIGHTS POLICY V1.0	Policy Number: 6	Approved By: HITE-CT Board
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### **PURPOSE:**

The purpose of the policy is to define consumer principles and expectations that will govern the design and implementation of health information exchange and technology in Connecticut.

### 10 **DEFINITIONS:**

#### **Breach**

The acquisition, access, use, or disclosure of Unsecured PHI in a manner not permitted by the HIPAA Privacy Rule that compromises the security or privacy of the PHI. To compromise the security or privacy of PHI means to pose a significant risk of financial, reputational or other harm to the individual whose PHI is involved. Breach excludes (i) any unintentional acquisition, access, or use of PHI by a Workforce Member or person acting under the authority of a Covered Entity (PHCS) or a Business Associate, if such acquisition, access, or use was made in good faith and with the scope of authority and does not result in further use or disclosure in a manner not permitted by the Privacy Rule, (ii) any inadvertent disclosure by a person who is authorized to access PHI at a Covered Entity (PHCS) or Business Associate to another person authorized to access PHI at the same Covered Entity (PHCS) or Business Associate, or Organized Health Care Arrangement in which the Covered Entity (PHCS) participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule, or (iii) a disclosure of PHI where a Covered Entity (PHCS) or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information. All Breaches are Reportable Events, however, not all Reportable Events are Breaches.

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#### **Business Associate**

- (A) An individual or entity who, on behalf of a covered entity or of an organized healthcare arrangement (as defined pursuant to 45 CFR 164.501) the covered entity participates in, excluding a member of the covered entity's workforce, performs, or assists in the performance of:
- a. A function or activity involving the use or disclosure of PHI, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and re-pricing; or
  - b. Any other function or activity regulated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA); or
- (B) Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for a covered entity, or to or for an organized healthcare arrangement, where the provision of the service involves the disclosure of PHI from the covered entity or arrangement, or from another business associate of the covered entity or arrangement, to the Healthcare Consumer or entity.

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A covered entity may be a business associate of another covered entity. [45 CFR 160.103]

45 **Healthcare Consumer**

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 healthcare service, subjects of care may also be referred to as patients, healthcare 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.

50 **Healthcare Consumer Agent**

Parent, guardian, or other legal representative [of the Healthcare Consumer] [ISO TS13606-4]

55 **Health Information Technology Exchange of Connecticut (HITE-CT)**

A quasi-public agency of the State of Connecticut charged by statute with promoting, planning and designing, developing, assisting, acquiring, constructing, maintaining and equipping, reconstructing and improving healthcare information technology, including the electronic exchange of health information.

60 **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.).

65 **Individually Identifiable Health Information**

Information that is a subset of health information including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearing house; and (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) That identifies the individual; or (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual. 45 CFR 160.103.

70 **May**

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

**Meaningful Use**

Pub.L. 111-5, Title IV, Subtitle A, Sec. 4101(a)(2)(A) MEANINGFUL EHR USER.—

80 IN GENERAL.—An eligible professional shall be treated as a meaningful EHR user for an EHR reporting period for a payment year or EHR reporting period if each of the following requirements is met:

(i) MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.— The eligible professional demonstrates to the satisfaction of the Secretary of Health and Human Services that during such period the professional is using certified EHR technology in a meaningful manner, which shall include the use of electronic prescribing as determined to be appropriate by the Secretary.

85 ‘(ii) INFORMATION EXCHANGE.—The eligible professional demonstrates to the satisfaction of the Secretary that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.

90 ‘(iii) REPORTING ON MEASURES USING EHR.— The eligible professional submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary. The Secretary may provide for the use of alternative means for meeting the requirements of clauses (i), (ii), and (iii) in the case of an eligible professional furnishing covered professional services in a group practice (as defined by the Secretary). The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

95 **Participating Healthcare Subscriber (PHCS)**

Any healthcare provider that has executed an effective Data Use and Reciprocal Support Agreement (DURSA) with HITE-CT. See Member List ([www.hitect.org/members](http://www.hitect.org/members)).

100 **Personal Health Record**

An electronic application through which individuals can maintain and manage their health information (and that of others for whom they are authorized) in a private, secure, and confidential environment. [ONC]

105 **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

110 **Reportable Event**

An action (or lack of action) that violates HITE-CT policies and procedures for accessing or using protected health information managed by the HITE-CT systems. Such violations may be unintentional or intentional.

115 **Shall**

The action must be taken.

**Should**

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

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**SCOPE/APPLICABILITY:**

125 This policy applies to HITE-CT, to all persons and organizations that 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)  
130 provided to or retrieved from the HITE-CT systems.

**POLICY:**

- 135 • Health Information Exchange through HITE-CT shall be designed and implemented to protect patient privacy while also realizing the potential of electronic patient data to support quality measurement, provider and institutional performance assessment, relative effectiveness and outcomes research, prescription drug monitoring, patient safety, public health, informed decision making by patients, addressing health disparities, data security, and other public interest objectives
- 140 • Consumers SHALL be able to access their personally identifiable health information contained within the HITE-CT systems conveniently and affordably
  - During Phase One of the HITE-CT start-up, participating healthcare subscribers (PHCSs) SHALL support the ability to provide a patient summary as specified by the meaningful use requirements (45 CFR Part 170 Subpart C §170.306(f, i)) at a minimum, diagnostic test results, problem list, medication list, medication allergy list.
- 145 This MAY be supported either directly from their EMR or their access to the HIE

portal. The PHCS MAY also provide additional clinical information available through HITE-CT to the patient (e.g. laboratory results).

- 150 ○ Healthcare Consumers SHOULD have a means of direct, secure access to their electronic health information that does not require physician or institutional mediation.
- 155 ○ Healthcare Consumers SHOULD have access to all electronic records pertaining to themselves (except in the case of danger to the patient or another person e.g. pursuant to CT state law section 20-7c If it is reasonably determined that information is detrimental to the physical or mental health of the patient, or is likely to cause the patient to harm himself, or herself or another).
- 160 ○ Healthcare Consumers SHALL be able to request amendment of, and share their PHI without fees or burdensome processes. An individual shall have the right to request an amendment from the Participating Healthcare Subscribers (PHCS) that registered the health information to the HITE-CT HIE. The PHCS shall process the request and approve or deny the request within the timeframe, and in accordance with the requirements, set forth in 45 CFR 164.526. If the PHCS finds that the information included in the exchange is erroneous and eligible for amendment, the PHCS shall inform the individual and obtain the individual's consent to provide such correction to the HITE-CT HIE. If the PHCS denies the request for amendment, the PHCS shall provide HITE-CT with a copy of the request for amendment, the PHCS's denial of the request, or an accurate summary of such information, and any statement of disagreement filed by the individual and rebuttal of the PHCS, or an accurate summary of such information, to the extent required by 45 CFR 164.526. This information shall be included with subsequent disclosures of the relevant PHI by HITE-CT, as required by 45 CFR 164.526.
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- A consumer SHALL be notified how their personally identifiable health information may be used and who has access to it.
  - 175 ○ Healthcare Consumers SHALL receive easily understood information identifying the types of entities with access to their protected health information (PHI) and all the ways it may be used or shared. The explanation shall include any sharing for purposes other than the immediate care of the individual, and shall explicitly identify intentions for data use such as public health protection, quality improvement, prevention of medical errors, medical research or commercial purposes (see HITE-CT Purpose of Use Policy <http://www.hitect.org/policies>).
  - 180 ○ Access to protected health information (PHI) must be limited to authorized individuals or entities.
  - 185 ○ Tracking and audit trail systems SHALL be in place that permits individuals to request a review of all entities that have entered, accessed, modified and/or transmitted any of their personally identifiable protected health information (PHI).
  - Consumers shall be presented with a notice of practices. Procedures shall be implemented to collect the acknowledgement of these practices from the healthcare consumer or their authorized representative.
- 190 ● A consumer SHALL have control over whether and how their personally identifiable health information is shared.

- Healthcare Consumers shall be able to opt-out of having their personally identifiable health information – in whole or in part – shared across an electronic health information network.
- 195 ○ Healthcare Consumers Individuals’ personally identifiable protected health information (PHI) will not be made available for commercial purposes.
- Healthcare Consumers should be able to designate someone else, such as a family member, caregiver or legal guardian, to have “access to and exercise” control over how records are shared, and also should be able to rescind this designation.
- 200 ○ Healthcare Consumers SHALL be notified that they have the option to include their “sensitive” protected health information (PHI) in the health information exchange (HIE) by executing an opt-in to share their sensitive data. Disclosure of Sensitive PHI (for HIV, substance abuse, mental health, genetics, etc.) will be determined according to existing federal and state laws governing such disclosure.
- 205 ● Systems for electronic health data exchange SHALL protect the integrity, security, privacy, and confidentiality of a consumer’s information.
  - Personally identifiable protected health information shall be protected by reasonable safeguards against such risks as loss or unauthorized access, destruction, use, modification, or disclosure of data. These safeguards will be developed at the front end and will follow the information as it is accessed or transferred.
  - 210 ○ Individuals shall be notified in a timely manner if their personally identifiable health information is subject to a security breach or privacy violation.
  - In the case of a suspected breach, the consumer that is the data subject of such a breach may request an investigation (see the Breach Notification Policy) by filing a report or complaint with HITE-CT’s privacy and security officer.
  - 215 ○ In the case of a security breach, there shall be a process by which healthcare consumers receive information about the available remedies that exist under existing law to get relief.
  - Meaningful legal and financial remedies shall exist to address any security breaches or privacy violations.
  - 220 ○ Federal and Connecticut laws that restrict the use and disclosure of personally identifiable protected health information shall apply to all entities engaged in health information exchange through HITE-CT.
  - Such a request SHALL be issued by the Healthcare Consumer or by the legally authorized Healthcare Consumer Agent.
  - 225 ○ In the case of a breach identified and investigated through HITE-CT, the consumer that is the data subject of such a breach SHALL also be notified.
  - Request accounting of disclosures: A consumer MAY request an accounting of disclosures for information registered in the HITE-CT HIE where the consumer is the data subject. Such a request SHALL be issued by the Healthcare Consumer or by the legally authorized Healthcare Consumer Agent.
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- Health information exchange shall be designed and built to meet the diverse needs of all CT residents, without barriers or diminished function or quality for some.
  - HITE-CT will be designed to accommodate the differing needs of younger people and older people; of people from diverse cultures and communities; of people who use diverse languages; of people with diverse abilities and disabilities; of people across the range of income levels; and of people across the range of literacy in reading, healthcare, and electronic technology.
- Implementation of the Health Information and Technology Exchange of CT shall be accompanied by a significant consumer education program so that individuals understand how the network will operate.
  - Consumer education will include: what information will and will not be available on the network; the value of the network; its privacy and security protections; how to participate in it; and the rights, benefits and remedies afforded to consumers.
  - The educational efforts shall include outreach to all Connecticut health consumers, including special populations and those without health insurance coverage, and will be designed to accommodate the differing learning needs of younger people and older people; of people from diverse cultures and communities; of people who use diverse languages; of people with diverse abilities and disabilities; of people across the range of income levels; and of people across the range of literacy in reading, healthcare, and electronic technology.
- The governance and administration of electronic health information networks SHALL be transparent and publicly accountable.
  - HITE-CT is a quasi-public agency of the State of Connecticut charged by statute with promoting, planning and designing, developing, assisting, acquiring, constructing, maintaining and equipping, reconstructing and improving healthcare information technology, including the electronic exchange of health information. The work of HITE-CT shall be transparent and is publically accountable.
- Consumer representatives are appointed members of the HITC-CT Board and consumers shall be an integral part of the design, implementation, and evaluation of health information exchange in CT. The HITE-CT HIE has been designed to protect patient privacy while fully leveraging the potential of electronic patient data to support quality measurement, provider and institutional performance assessment, relative effectiveness and outcomes research, prescription drug monitoring, patient safety, public health, informed decision making by patients and other public interest objectives.
- Consumer rights to request record
  - All record requests by consumer SHALL be directed to a PHCS, generally through the provider that registered the clinical content, their primary care provider or other medical home. The care provider MAY respond to such a request with all summary documents available for the patient in the HITE-CT HIE.

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- 275 ● Personal Health Record Interoperability Policies and Procedures:
  - A covered entity MAY offer a Personal Health Record.
  - A Personal Health Record service MAY be offered by the HITE-CT HIE.
  - All Personal Health Record services SHALL assure the identity of the patient is vetted in accordance with the HITE-CT HIE Identity Management Policy.
  - 280 ○ A covered entity or HITE-CT MAY provide consumers with a means of direct, secure access to their electronic health information that does not require physician or institutional mediation.
- Format of records provided to the consumer:
  - The consumer can anticipate one or more summary records delivered using a standard 285 HL7 Continuity of Care Document as constrained for Meaningful Use: HITSP Summary Documents Using HL7 Continuity of Care Document (CCD) Component, HITSP/C32, July 8, 2009, Version 2.5, IBR approved for § 170.205, and as further constrained by §170.304(f), §170.304(h), and §170.304(i) which require that the 290 summary document containing at a minimum, diagnostic tests results, problem list, medication list, and medication allergy list.
  - Additional document types MAY be available subject to provider activity with the HITE-CT HIE including, but not limited to:
    - Laboratory report documents
    - 295 ▪ Specialty care documents (e.g. Antepartum summaries, Labor and Delivery Summaries, Emergency Summaries, etc)
    - Other type of documents collected by the HITE-CT HIE
- Proved procedures and instructions for how to Opt-Out of the Health Information Exchange
  - In order to allow the consumer the ability for informed decisions, PHCS SHALL not load historical patient data.
  - 300 ○ Personally identifiable information SHALL not be disclosed EXCEPT as permitted under [45 CFR 164.506] for the purposes of:
    - Treatment
      - Clinical care provision to an Healthcare Consumer
      - Emergency care provision to an Healthcare Consumer
      - 305 ● Support of care activities within the provider organization for an Healthcare Consumer
      - Healthcare Consumer Uses
    - Payment
      - Administration of care for an Healthcare Consumer
    - 310 ▪ Operations
      - Health service management and quality assurance
    - Public Health

- *Public Health Surveillance, Disease Control*
- *Public safety emergency*
- *Population health management*

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- The consumer may choose to Opt Out of the HITE-CT information exchanges. In order to exercise this option, the consumer SHALL sign the opt out request and provide this request to a PHCS, generally their primary care provider or other medical home. When the consumer chooses to Opt Out of the HITE-CT information exchanges, personally identifiable health information will not be shared except where sharing this information is permissible (e.g. public health) under separate statute [45 CFR 164.512(b)].
- All Opt Out requests SHALL be issued by the Healthcare Consumer or by the legally authorized Healthcare Consumer Agent.

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**Policy Maintenance**

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

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