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| <b>Document Name:</b>         | No Information Blocking Policy   |                          |   |                                       |           |
| <b>Document Code:</b>         | POL-ADM-0025-A   |                          |   | <b>Formerly:</b><br>(if applicable)   | See below |
| <b>Approval Authority:</b>    | Board of Directors   | <b>Adopted:</b>          | 1/26/2021   | <b>Reviewed:</b><br><b>Frequency:</b> | Annually  |
| <b>Responsible Executive:</b> | Melissa Kotrys   | <b>Revised:</b>          | See below   |                                       |           |
| <b>Responsible Office:</b>    | Administration   | <b>Contact:</b>          | Melissa Kotrys  |                                       |           |
| <b>Distribution:</b>          | <b>X</b> - Staff   <b>X</b> -<br>Participants<br><b>X</b> – Vendors   <b>X</b> -<br>Public | <b>Posted Locations:</b> | <b>X</b> - Internal Policy Library<br><b>X</b> - Public Website |                                       |           |

**1. Purpose**

The purpose of this policy is to support Health Current’s and Participants’ commitment to facilitating the timely access, exchange and use of EHI in compliance with Applicable Law.

**2. Scope**

This policy applies to Health Current and Participant Actors.

**3. Definitions**

All capitalized terms in this HIE Participant Policy Manual will have the same meaning as provided in the Definitions Policy, in the Health Current Participation Agreement or HIPAA, all as amended from time to time.

**3.1. Electronic Health Information (EHI)** means electronic protected health information (ePHI) contained in a Designated Record Set (DRS), regardless of whether the group of records are used or maintained by or for a covered entity, as those terms are defined by HIPAA. EHI may encompass medical and billing records, health plan records, and other records used to make decisions about individuals when such records are maintained by Healthcare provider, CHIT Developer, HIN or HIE. EHI specifically excludes psychotherapy notes or information compiled in anticipation of or for use in a civil, criminal, or administrative action or proceeding. EHI also excludes data de-identified in accordance with the HIPAA.

**3.2. Information Blocking** refers to practices (i.e., acts or omissions) that are likely to prevent, materially discourage or otherwise inhibit (i.e., to interfere with) the access, exchange or use of EHI, including:

**3.2.1.** The ability or means necessary to make EHI available for exchange or use (i.e., access to EHI),

**3.2.2.** The ability for EHI to be transmitted between and among different technologies, systems, platforms, or networks (i.e., exchange of EHI); and/or



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3.2.3. The ability for EHI, once accessed or exchanged, to be understood and acted upon (i.e., use of EHI).

3.4 **Required by Law** means a practice that is explicitly required by State or Federal law, including statutes, regulations, court orders, binding administrative decisions or settlements, as well as tribal law (as applicable). Required by Law does not mean practices permitted by law or engaged in pursuant to a law (such as privacy laws that require an individual's consent or authorization prior to disclosing EHI to the requestor).

3.5 **Safe Harbor** refers to a regulatory exception to the Information Blocking Rule, see [45 C.F.R. Part 171](#).

## 4. Policy

### 4.1. Compliance with the Information Blocking Rule

4.1.1. Health Current and its Participants will comply with Applicable Law in connection with HIE services, including the requirements of the Information Blocking Rule (if applicable). Actors may be subject to penalties or disincentives if they violate the Information Blocking Rule by engaging in Information Blocking practices with the requisite level intent, and if the practice is not Required by Law or does not qualify for a Safe Harbor.

4.1.2. Health Current and Participant Actors may not engage in any practices that violate the Information Blocking Rule in connection with HIE services. This policy does not prevent Health Current or Participant Actors from engaging in practices that are Required by Law or that fall within a Safe Harbor. Health Current and Participant Actors are each independently responsible for identifying, assessing, and determining whether its own practices implicate the prohibition on Information Blocking, are Required by Law or qualify for a Safe Harbor.

### 4.2. Safe Harbors

For illustrative and educational purposes only, below is a descriptive summary of the Safe Harbors set forth in the Information Blocking Rule. **All of the regulatory conditions must be met in order for a Safe Harbor to apply.** This policy does **NOT** provide a comprehensive explanation of all the Safe Harbor conditions or guidance regarding what Actors must do to qualify for a Safe Harbor.

#### 4.2.1. Preventing Harm

The Preventing Harm Safe Harbor may apply when an Actor reasonably believes that a practice would substantially reduce a regulatory cognizable risk of harm to a natural person that otherwise would arise from the access, exchange or use of EHI, so long as the practice is no broader than necessary to reduce the risk of harm and all the regulatory conditions are met.

#### 4.2.2. Privacy

The Privacy Safe Harbor may apply if an Actor does not fulfill a request to access, exchange or use EHI in order to protect an individual's right to confidentiality of EHI or



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privacy preferences, so long as the regulatory conditions of the applicable sub-exceptions within the Privacy Safe Harbor are met.

#### **4.2.3. Security**

The Security Safe Harbor may apply to practices that are directly related and tailored to safeguarding the confidentiality, integrity, and availability of EHI, so long as the regulatory conditions are met.

#### **4.2.4. Content and Manner**

An Actor will not violate the Information Blocking Rule if an Actor fulfills a request for access, exchange or use of EHI in the manner it is requested or in an alternative manner, so long as all the regulatory conditions are met (including compliance with the requirements of the Fees Safe Harbor and Licensing Safe Harbor, if applicable). If fulfilling the request, even in an alternative manner, would impose a significant burden on the Actor, the Actor may seek to deny the request in compliance with the Infeasibility Safe Harbor.

#### **4.2.5. Infeasibility**

The Infeasibility Safe Harbor may apply in those circumstances where legitimate practical challenges may limit or prevent an Actor from complying with a request for access, exchange or use of EHI because of an uncontrollable event (such as a public health emergency), lack of technical capabilities (such as the ability to segment sensitive health information), legal rights, or other means necessary to fulfill the request, so long as the regulatory conditions are met.

#### **4.2.6. Fees**

An Actor will not violate the Information Blocking Rule by charging reasonable fees related to developing the technology and services giving access to the EHI, so long as the regulatory conditions are met.

#### **4.2.7. Licensing**

An Actor will not violate the Information Blocking Rule by licensing its technology and/or services used to access, exchange, or use EHI, so long as the regulatory conditions are met.

#### **4.2.8. Health IT Performance**

The Health IT Performance Safe Harbor is intended to apply to those practices that make health IT temporarily unavailable or degrade performance for the benefit and health of the overall performance of the health IT, so long as the regulatory conditions are met.

### **4.3. Information Blocking Complaints**

**4.3.1.** Participants that reasonably believe Health Current or a Participant Actor is violating the Information Blocking Rule in connection with the HIE Services



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should promptly notify Health Current. Complaints may be submitted anonymously.

**4.3.2.** Health Current may initiate an investigation into a complaint of Information Blocking involving a Participant Actor and/or take any other appropriate action, depending on the facts and circumstances surrounding the complaint.

**4.3.3.** Participant Actors must cooperate with Health Current in any investigation into a complaint of Information Blocking, including providing upon reasonable request by Health Current an explanation of the practice alleged to constitute Information Blocking and/or producing any necessary or relevant documentation to support application of a Safe Harbor.

### **5. Compliance**

Health Current management will enforce this policy. Violations may result in disciplinary action, which may include suspension, restriction of access, or more severe penalties up to and including termination of employment or HIE participation. Where illegal activities are suspected, Health Current may report such activities to applicable authorities.

### **6. Who Should Read this Policy?**

6.1. Health Current HIE Participants

6.2. Health Current Staff

6.3. Health Current HIE Subcontractors

### **7. Reference/Citation**

Embedded.

### **8. Cross Reference and/or Attachments**

#### **Revision Table**

| <b>Version</b> | <b>Date</b> | <b>Description of Change</b>  | <b>Revised By</b>  |
|----------------|-------------|---|--------------------|
| A              | 1/26/2021   | Adopted Participant Policy Manual including this No Information Blocking Policy | Board of Directors |