

Patient Opt Out and Opt Back In Policy

Version	Approval Date	Owner
1.1	September 15, 2019	Privacy Officer

1. Purpose

To set forth minimum requirements pursuant to which patients are made aware of how their data may be collected, used and disclosed through the HealthShare Exchange (HSX), and are assured the right to “Opt-Out” of having their data made available for access through HSX, if they so choose.

2. Scope

This policy covers all HSX privacy practices across all departments and business units. All HSX employees, interns, contractors, members, users, and third parties are required to comply with this policy.

There are exceptions to the Opt-Out Policy as follows: the HSX Encounter Notification Service and when HSX acts as a conduit for Direct Secure Messaging Services. Also, an Opt Out request does not prohibit healthcare providers from disclosing a patient’s medical information based on other authorizations and applicable law, or by other methods.

3. Policy

Including data in HSX:

- Data contained in a Clinical Data Repository (CDR) that is maintained by a HSX Participant registered with HSX as a data sharer, shall be pushed to and maintained in HSX for and on behalf of the Member/participant.
- Data contained in an Electronic Health Record (EHR) that is maintained by a Member/participant registered with HSX as a data supplier will, in general, also be pushed to and maintained in HSX. A data supplier may choose to retain control over when and what data is pushed to HSX in accordance with their Participation Agreement.
- Including data in HSX does not automatically permit access to such data by all Members/participants. Data maintained in the HSX Clinical Data Repository must

not be accessed by any Member/participant unless such access is in accordance with and permissible under HSX policies, and all additional requirements and conditions, including under federal and state law, are satisfied.

Patient Education:

- Patients shall be provided with educational information regarding HSX and how their data may be used and shared with registered Members/participants.
- To facilitate patients' understanding regarding where information about them is being generated, stored and being made accessible for exchange, a list of health care providers participating in HSX shall be made available through the HSX website.
- Members/participants should ensure that their HIPAA Notice of Privacy Practices (NPP) is compliant with the *Notice of Privacy Practices Policy*.

Choice to Not Participate in HSX:

- Patients who are treated by a health care provider who is a Member/participant of HSX shall be given the option and opportunity to choose to not have data about them accessed or made available through HSX.
- Patients may exercise their right to be excluded from HSX by completing an Opt-Out Form. Once a patient has completed and submitted such Opt-Out Form, the patient's decision to opt-out of having their data shared through HSX shall be honored. Any Member/participant that receives a copy of the Opt-Out Form shall transmit the same without delay to HSX for processing.
- The Opt-Out Form must be made available through the HSX website.

Effect of Opt-Out:

- A patient's choice to not have data made available through HSX may be exercised through HSX.
- After a patient exercises the decision to opt-out, such patient's data shall no longer be accessible to Members/participants through HSX. The patient's opt-out shall be durable and revocable. A patient may revoke their opt-out by contacting HSX via phone or email.
- Each Member/participant shall implement appropriate procedures and mechanisms to ensure that there is no further access of the patient's data through HSX for patients who opt-out of HSX. Such procedures shall include at least the following:
 - Patient submits completed HSX Opt-Out Form or equivalent to their health care provider that is a Member/participant in HSX, or through submitting the same in accordance with instructions provided on such form (e.g., mail in or fax in to HSX).
 - Any Opt-Out Form submitted to a Member/participant shall be forwarded without delay to HSX.
 - HSX's Privacy Officer shall be responsible for processing opt-out requests.

- Members/participants in HSX shall establish procedures in connection with patients' opt-out requests that they receive, which shall include at a minimum that:
 - Opt-out elections are forwarded to HSX expeditiously so that the patient's request is processed in a timely manner.
 - An acknowledgement per the patient's request shall be furnished to the patient, either by mail, email, or by telephone, provided that any such conversation is documented, indicating that their opt-out request has been received and processed.
- Members/participants and HSX shall retain copies of completed Opt-Out Forms and acknowledgements. Such documentation shall be maintained for a minimum of seven (7) years. Copies retained by Members/Participants shall be included as part of the patient's record.

Revocation of Opt-Out:

- A patient who has opted-out of HSX subsequently may choose to have their data made available through HSX only if such patient rescinds the prior decision to opt-out in writing, or subsequently chooses to renew participation in the HSX.
- Each Member/participant shall implement appropriate procedures and mechanisms to effectuate a patient's rescission of prior opt-out in order to allow the patient's information to be accessible through HSX. Such procedures shall include at least the following:
 - Patient submits completed Opt Back In Form to HSX in accordance with instructions provided on such form (e.g., mail in or fax in to HSX).
 - Any such form submitted to a Member/participant shall be forwarded without delay to HSX.
 - HSX's Privacy Officer shall be responsible for processing Opt Back In requests.
- Members/participants of HSX shall establish procedures in processing patients' revocation of prior opt-out requests, which shall include at a minimum that:
 - Revocations of opt out or Opt Back In requests be forwarded to HSX expeditiously so that they can be processed in a timely manner.
 - An acknowledgement per the patient's request shall be furnished to the patient, either by mail, email, or by telephone, provided that any such conversation is documented, indicating that their revocation request has been received and processed.
- Members/participants and HSX shall retain copies of completed Opt Back In Forms and acknowledgements. Such documentation shall be maintained for a minimum of seven (7) years. Copies retained by the Members/Participants shall be included as part of the patient's record.

Members/participants Procedures:

- Each Member/participant shall establish reasonable and appropriate procedures in accordance with HSX policies and implementing guidelines to enable the exercise of a patient's choice not to have their data accessed by or through HSX (Opt-Out).
- Each Member/participant shall be solely responsible for knowing and determining whether and if the patient's oral or written authorization or consent must be obtained prior to allowing access to such patient's data through HSX. For example, if a law or regulation requires a health care provider (e.g., a psychologist) to not permit disclosure of data without prior written consent of the patient, then such health care provider is solely responsible for obtaining prior written consent or not participating in HSX in a manner that would cause a violation of such standard or law.

Opting Out from Other HIEs:

- A patient who chooses to opt-out of HSX may still continue to have their data shared in other HIEs, if such patient so chooses.
- The HSX opt-out shall prevent the patient's data from being shared through HSX and P3N only, unless alternative procedures are established by way of a contract between another HIE and HSX.
- Patients shall be reminded to opt-out of other HIEs (as applies).

4. Procedure

None

5. Enforcement

The Chief Information Security Officer (CISO) and Privacy Officer shall be responsible for enforcing compliance of this policy under the direction of the President.

6. Definitions

For a complete list of definitions, refer to the *Glossary*.

7. References

Regulatory References:

- PA eHealth Reference: 7.4. Meaningful Patient Notification
- PA eHealth Information Technology Act Section 701: Consent and confidentiality of health information.

Policy Owner	Privacy Officer	Contact	Don.Reed@healthshareexchange.org
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Related Documents	Glossary Notice of Privacy Practices (NPP) Policy Opt-Out Form Opt Back In Form Participation Agreement		