

**Subcommittee:** Policy

**Chair:** Mr. Justin Palmer

**Vice-Chair:** Mr. Praveen Chopra

**Date:** August 1, 2019

**Report Status:** Final



## **District of Columbia Health Information Exchange Policy Board**

### **Recommendations for Notice of Privacy Practices**

#### **I. SUMMARY**

The final DC HIE Rule includes several sections requiring DHCF to provide guidance. DHCF has sought the advice of the HIE Policy Board and its subcommittees on those guidance areas.

Section 8707.2 of the HIE Rule states that “a participating organization shall provide written notice to each health care consumer no later than the first medical encounter following enrollment of the organization in a registered HIE entity, of: a) Such organization’s participation with a registered HIE entity, including in such organization’s Notice of Privacy Practices under HIPAA.” The Policy Subcommittee conducted an analysis and review of the NPPs utilized by participating organizations and made some recommendations to provide guidance to current NPP language.

#### **II. PROBLEM STATEMENT**

The problem that this report addresses is the difference in the language used in NPPs by participating organizations. Some covered entities that include participation in HIE’s use language such as “may” to notify their participation. Other organizations use the CRISP recommended language such as “we have chosen.” There needs to be consistent language to strengthen the current NPP of all practices.

#### **III. SUBCOMMITTEE GOAL AND ACTIVITY**

The Subcommittee focused on goal #1 and activity #1 of the HIE Policy Subcommittee’s workplan, stated below:

- Goal 1: Make recommendations to the District government on pending policy issues for the (ongoing) implementation of the DC HIE Rule.
- Activity 1: Analyze and review sample Notice of Privacy Practices for participating organizations.

#### **IV. FINDINGS/ANALYSIS**

The Subcommittee reviewed several NPPs, which also included the DC Mental Health Information Act and the CRISP mental health addendum to their own NPP. Additionally, the subcommittee compared the NPPs from various providers, and HIEs to the guidance provided by ONC to ensure that they align with HIPAA. There will likely be a need to revisit the NPP guidance once the TEFCA Rule is final to ensure that qualified health information networks who exchange data through the national network comply with the Common Agreement’s relationship to HIPAA.

Below are the Subcommittee’s recommendations for NPP guidance to be considered by the Board:

- Utilize the ONC Model Notice of Privacy Practices for the basic structure of the NPP: [https://www.healthit.gov/sites/default/files/2016\\_model\\_privacy\\_notice.pdf](https://www.healthit.gov/sites/default/files/2016_model_privacy_notice.pdf).

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- In addition to the sections in the ONC model NPP, add a section specifically for behavioral health data which includes the following:
  - A statement that progress notes will not be included in any data that is shared with another healthcare provider.
  - A statement that their data can be shared with other healthcare providers for diagnosis, evaluation, treatment, case management, conduct of quality assessment or improvement activities, or rehabilitation of a health or mental disorder or disease when and to the extent necessary to facilitate the delivery of health or professional services to the individual.
  - A statement that the individual can elect not to have their information shared for these purposes.
- Because the District’s definition of “secondary use” of data is slightly different than the model notice of privacy practices, add a section to the model that specifically addresses secondary uses of data that are allowed and modify the current items in the model.
- Note that HIEs that allow for secondary uses would need to spell out the same items in the model on identified vs deidentified and whether data is sold or shared and for what purpose.
- NPPs should be updated when any piece of information is modified and/or when the Office for Civil Rights (OCR) makes modifications to HIPAA requirements.
- Clearly explain and provide the necessary information to users of how to opt-out and disable access to sharing of their health information through an HIE. See [Johns Hopkins NPP](#) example and Kaiser NPP example provided below:

*At Kaiser Permanente, knowing your medical history, such as your active medications and allergies, is critical to help ensure that you receive high-quality care. Recent advancements in technology now support the safe and secure electronic exchange of important clinical information from one health care provider to another, through Health Information Exchange (HIE) networks.*

*Kaiser Permanente operates an HIE network among its regions, and also participates in several HIE networks with trusted outside health care providers who have electronic medical record systems’ participants like Kaiser Permanente are required to comply with specific federal and state laws that protect the privacy and security of your health and personal information. For example, we cannot share sensitive health information, including psychotherapy notes and records of substance abuse, through the HIE without first obtaining your written authorization.*

*Participation in HIE is completely your choice. You can choose to not have your information shared electronically through any of our HIE networks (“opt out”) at any time, by filling out the “Health Information Exchange Opt-Out” form available below and returning it to the fax number or address provided on the bottom form.*

*Please note that if you opt out, the health care providers treating you are still permitted to contact us to ask that your health information be shared with them through other*

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*means, such as by fax. Opting out does not prevent information from being shared between members of your care team.*

**V. RECOMMENDATION(S) FOR BOARD ACTION:**

The DC HIE Policy Board endorses this report and recommends that DHCF make this information available on its website, within a one-year timeframe, to meet the requirements of the DC HIE Rule. The DC HIE Entities should provide this guidance to their participating organizations for improvements and modifications to NPPs. The recommendation in this report is made with lead for subcommittee and DHCF staff to make final disposition to post on its website.

**VI. CONCLUSION**

The key issue that is explored in this report are the discrepancies in the language used by different participating organizations. The NPP's must be simple and easy to understand for beneficiaries, and it is important that the language used is consistent. This report provides some suggested guidance to current NPP language to include OCR and ONC's NPP to strengthen current NPPs.

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**Committee Members:** Mr. Luigi LeBlanc, Ms. Genevieve Morris, Mr. Praveen Chopra

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**\*\*\* VOTING \*\*\***

**FIRST MOVEMENT: Dr. Eric Marshall**

**SECONDED BY: Dr. Jessica Herstek**

**QUORUM: 10**

**TIME: 4:00 PM**

<b>Public Members</b>	<u>Ayes</u>	<u>Nays</u>	<u>Abstain</u>	<u>Not Present</u>
Osinupebi-Alao, Olubukunola	✓			
Clemmons, Zinethia	✓			
Herstek, Jessica	✓			
Hettinger, Zach (Aaron)				✓
Johnson-Ramos, Donna	✓			
Leiter, Alice	✓			
Marshall, Eric	✓			
Moghimi, Yavar				✓
Orlowski, Janis	✓			
Palmer, Justin J. (Vice-Chair)	✓			
Rein, Allison	✓			
Rhoads, Amanda				✓
Turner, James	✓			
Wade, Lucinda				✓
<b>Pending Appointment</b>				
Lewis, Barry				
<b>Ex-Officio Members</b>				
DBH Vacancy				
Byrd, Melisa	✓			
Hasan, Dena				✓
Holve, Erin (Chair)	✓			
Krucoff, Barney	✓			
Nesbitt, LaQuandra (designee Lauren Ratner)	✓			
<b>Ex-Officio (Non-Voting) Member</b>				
Whitman, Amelia				