

Pre-Decisional Draft. Do Not Distribute.

Nationwide Health Information Network
NHIN Coordinating Committee

SUBJECT: NHIN DATA USE AND RECIPROCAL SUPPORT AGREEMENT AMENDMENT PROCESS		
Approved by NHIN Coordinating Committee	POLICY #: NHIN-CC: 8	
Date Approved: April 15, 2010	Version: 1.0	Page 1 of 4

I. Purpose

The NHIN Coordinating Committee has responsibility for managing amendments to the Data Use and Reciprocal Support Agreement (DURSA). The purpose of this policy is to set forth the procedure by which the NHIN Coordinating Committee will fulfill this responsibility.

II. Policy

The NHIN Coordinating Committee shall establish and maintain a process for amending the Data Use and Reciprocal Support Agreement (DURSA) that is consistent with Section 25.02 of the DURSA. Any amendments to the DURSA shall be done consistent with this policy and Section 25.02 of the DURSA.

III. Procedure:

A. Retention and Dissemination of the DURSA and Joinder Agreements

The official, executable version of the DURSA shall be maintained in an electronic form by ONC. The NHIN Coordinating Committee requests that ONC maintain the DURSA in a location that is accessible to all Participants, Members of the NHIN Coordinating Committee, Members of the NHIN Technical Committee, and any other stakeholders that the NHIN Coordinating Committee determines require access.

The NHIN Coordinating Committee requests that National eHealth Collaborative (NeHC) maintain all original, executed copies of the DURSA and Joinder Agreements as well as a current list of all parties that have executed the DURSA or a Joinder Agreement.

The current version of the DURSA as well as originals of all previous versions shall be maintained for the duration of their usefulness as determined by the NHIN Coordinating Committee.

B. Submission of Proposed Amendments to the DURSA

Any Member of the NHIN Coordinating Committee, Participant or member of the NHIN Cooperative may submit in writing to the NHIN Coordinating Committee a request for an amendment to the DURSA. Additionally, the NHIN Coordinating Committee may, at its discretion, solicit requests from the NHIN Cooperative for amendments to the DURSA. When the NHIN Coordinating Committee solicits requests for amendments, it will notify members of the NHIN Cooperative by posting the solicitation on the NHIN Portal. The solicitation will include the period during which requests for amendment may be submitted and the required form for requests.

All requests for proposed amendments shall identify (i) the section of the DURSA that is the subject of the requested amendment (if any), (ii) a thorough description of why the requested amendment is necessary, (iii) the proposed contractual language for the requested amendment; and (iv) an analysis of the expected impact of the requested amendment.

C. Consideration of Proposed Amendments to the DURSA

The NHIN Coordinating Committee will forward any requests that meet the submission criteria set forth in Section III.B above to legal counsel to the Coordinating Committee for review. Counsel will present the requested amendment to the NHIN Coordinating Committee for initial consideration at the NHIN

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Date Approved: April 15, 2010	Version: 1.0	Page 2 of 4

Coordinating Committee's next regularly scheduled meeting. Counsel will summarize the request for the NHIN Coordinating Committee and provide any other information requested by the NHIN Coordinating Committee to allow it to determine whether the request has merit. If, after considering the request, the NHIN Coordinating Committee determines that the request does not have merit, it will communicate this determination to the requestor.

If, after considering the request, the NHIN Coordinating Committee determines that the request has merit, it will forward the request to a task group designated by the NHIN Coordinating Committee to review the request and make a recommendation for action to the NHIN Coordinating Committee.

If the task group's recommendation is that the DURSA should not be amended and the NHIN Coordinating Committee approves such a recommendation, the NHIN Coordinating Committee will inform the requestor of its determination.

If the task group's recommendation is to amend the DURSA and the NHIN Coordinating Committee approves such a recommendation, the NHIN Coordinating Committee will identify the timeframe to seek Participant approval of the recommended amendment, either individually or bundled with other scheduled amendments.

When the NHIN Coordinating Committee informs the Participants of its recommendations for amendments to the DURSA and seeks Participant approval of such amendments, the NHIN Coordinating Committee will provide Participants with the following information:

- a copy of the proposed amendment to the DURSA;
- a thorough description of why the requested amendment is necessary, and any foreseeable impact of the change;
- a statement regarding whether the proposed amendment is necessary in order for the NHIN, the NHIN Coordinating Committee, or Participants to comply with Applicable Law;
- a projected effective date for the proposed amendment; and
- the date by which each Participant must submit its approval or rejection of the proposed amendment through a written communication to the NHIN Coordinating Committee, with sufficient time for Governmental Participants to get any necessary approvals through a Federal clearance process.

To the extent that all Participants are represented on the NHIN Coordinating Committee, the obligation to inform all Participants of the proposed amendment may be satisfied through discussion of the amendment at a meeting of the NHIN Coordinating Committee.

D. Approval or Rejection of Proposed Amendments to the DURSA

Amendments to the DURSA must be approved by the Participants in accordance with Section 25.02 of the DURSA. The requirements of that section are explained below.

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Date Approved: April 15, 2010	Version: 1.0	Page 3 of 4

For proposed amendments to the DURSA that are not required for the NHIN, the NHIN Coordinating Committee, or Participants to comply with Applicable Law, at least two-thirds of the non-governmental Participants and at least two-thirds of the Governmental Participants must approve the amendment in order for it to be adopted.

For proposed amendments to the DURSA that are required for the NHIN, the NHIN Coordinating Committee, or Participants to comply with Applicable Law, at least a majority of the non-governmental Participants and at least a majority of the Governmental Participants must approve the amendment in order for it to be adopted.

Participants will submit their approval or rejection of a proposed amendment to the NHIN Coordinating Committee in writing by the date identified by the NHIN Coordinating Committee in its notice to Participants recommending amendment of the DURSA. If a Participant rejects a proposed amendment, the Participant must provide a justification for such rejection.

When calculating the number of Participants that have approved an amendment, the NHIN Coordinating Committee will count the number of Participants that have submitted written notice of approval as of the date provided by the NHIN Coordinating Committee in its notice to Participants recommending amendment of the DURSA.

If the requisite number of Participants do not approve an amendment (either 2/3 or a majority, see above), the amendment is rejected and does not take effect. If the requisite number of Participants do approve an amendment, the NHIN Coordinating Committee will establish an effective date for the amendment and will provide all Participants with notice of the approval of a proposed amendment at least 30 days prior to the effective date of the amendment. Within 15 days of receiving notice of the amendment, a Participant may request that the NHIN Coordinating Committee delay the effective date of the amendment based on unforeseen complications or other good cause. The NHIN Coordinating Committee will meet to evaluate such request and respond to the request within 7 days.

Once an amendment is approved by the Participants, all Participants must sign the amendment to the DURSA prior to the effective date of the amendment or terminate their participation in accordance with Section 21.02 of the DURSA and Operating Policy and Procedure 3. If a Participant does not sign an amendment prior to the effective date, the Participant will be considered to have terminated its participation in the NHIN.

IV. Definitions:

NHIN Cooperative: a group of those entities eligible to engage in NHIN Limited Production Exchange.

DURSA: Data Use and Reciprocal Support Agreement

All other capitalized terms, if not defined herein, shall have the same meaning as set forth in the DURSA.

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Date Approved: April 15, 2010	Version: 1.0	Page 4 of 4

V. References:

DURSA

VI. Related Policies and Procedures:

NHIN CC OP&P: 3 – Participation – Changes, Suspension, Termination

VII. Version History:

	Date	Author	Comment
1	3/9/10	Steve Gravely and Erin Whaley	Original Draft based on request of the NHIN CC at its 2.18.10 meeting
2	3/18/10	Steve Gravely, Erin Whaley and Mariann Yeager	Revisions based on feedback from the NHIN CC at its 3.18.10 meeting
3	4/16/10	Aaron Seib	Updated status and version number to reflect Coordinating Committee approval. Updated formatting.