

Pre-Decisional Draft. Not For Distribution.

Nationwide Health Information Network
NHIN Coordinating Committee

SUBJECT: INFORMATION HANDLING		
STATUS: APPROVED by NHINCC	POLICY #: NHIN-CC: 6	
Date Approved: 2/18/2010	Version: 1	Page 1 of 5

I. Purpose

In fulfilling its obligations under the DURSA, the NHIN Coordinating Committee may request and receive information from Applicants and Participants. To the extent that such information is labeled by an Applicant or Participant as “Confidential Participant Information,” it will be treated as such by the NHIN Coordinating Committee. This policy sets forth the procedure by which the NHIN Coordinating Committee will handle Confidential Participant Information.

II. Policy

Each member of the NHIN Coordinating Committee is obligated to hold all Confidential Participant Information in confidence and agrees that he or she shall not, during the term of his or her tenure on the NHIN Coordinating Committee or thereafter, disclose to any person or entity, nor use for his or her business or benefit, any information obtained in connection with his or her performance of duties as part of the NHIN Coordinating Committee. The legal basis for this obligation varies depending on the capacity in which the individual is serving as a NHIN Coordinating Committee Member.

- Type 1 Members (Participants) are obligated to maintain the confidentiality of Confidential Participant Information pursuant to the DURSA.
- Type 2 Members (Definitive Plan) are obligated to maintain the confidentiality of Confidential Participant Information under the terms of their Definitive Plan Application.
- Type 3 Members (Cooperative Leadership representatives) are obligated to maintain the confidentiality of Confidential Participant Information pursuant to the terms of their contract with ONC.
- Type 4 Member (ONC representative) is obligated to maintain the confidentiality of Confidential Participant Information as part of their employment or engagement with ONC.

Those Support Staff and Advisors who the Coordinating Committee provides access to Confidential Participant Information are obligated to maintain the confidentiality of such Confidential Participant Information through their employment by, or contractual relationship with, ONC, NeHC or a Member of the NHIN Coordinating Committee.

III. Procedure

1. *Request for Information:* In the exercise of its obligations under the DURSA, the NHIN Coordinating Committee may request information from Participants and Applicants for the following reasons:
 - a. Reviewing, evaluating and acting upon Definitive Plans submitted by organizations that want to become members of the NHIN Coordinating Committee;
 - b. Determining whether to admit new participants to the NHIN;
 - c. Suspending or terminating Participants in accordance with Section 21 of the DURSA;
 - d. Receiving reports of Breaches and acting upon such reports in accordance with Section 16.03 of the DURSA;
 - e. Resolving Disputes between Participants in accordance with Section 23 of the DURSA;

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- f. Determining materiality of proposed new, or changes to existing, NHIN Performance and Service Specifications in accordance with Section 11.03 of the DURSA;
 - g. Developing and amending NHIN Operating Policies and Procedures in accordance with Section 12 of the DURSA;
 - h. Managing the amendment of the DURSA in accordance with Section 25.02 of the DURSA; and
 - i. Fulfilling all other responsibilities delegated by the Participants to the NHIN Coordinating Committee as set forth in the DURSA.
2. *Identification of Confidential Participation Information:* Upon receipt of information from Applicants or Participants, the Secretary of the NHIN Coordinating Committee will determine whether the information bears a label that indicates that it is Confidential Participant Information. Such labels do not have to say “Confidential Participant Information,” but must indicate the confidential nature of the information. Acceptable labels include, but are not limited to, “confidential,” “proprietary,” and “do not disclose.”
3. *Participant Requests for Additional Restrictions.* Participants are permitted to request restrictions on the disclosure of their Confidential Participant Information beyond those restrictions provided in the DURSA and this Operating Policy and Procedure. The Coordinating Committee will review all such requests and, in its sole discretion, will determine whether to approve such requests. The NHIN Coordinating Committee will notify the Participant of its decision regarding the request.
4. *Storage of Information:* Confidential Participant Information shall be stored in electronic form on the portion of the Secure Site designated for such use. Access to the portion of the Secure Site designated for Confidential Participant Information will be limited to Members of the NHIN Coordinating Committee and such support staff and advisors as determined by the Coordinating Committee. On a routine basis, but no less frequently than every six (6) months, the NHIN Coordinating Committee will review a list of those who have access to the portion of the Secure Site designated for Confidential Participant Information and confirm the accuracy of the list.

The electronic file name for any Confidential Participant Information will indicate that it is Confidential Participant Information. Members of the Coordinating Committee shall not store Confidential Participant Information on their personal or business computers or in their own files. All electronic versions of Confidential Participant Information shall be maintained solely on the Secure Site.
5. *Retention:* Confidential Participant Information will be retained for the duration of its usefulness as determined by the NHIN Coordinating Committee; as required by contract, law, and/or business use; or, until the NHIN Coordinating Committee’s duties are assigned to any successor organization with responsibility for oversight of the operation and support of the NHIN.
6. *Use of Confidential Participant Information:*
 - a. Confidential Participant Information will only be used by the Members of the NHIN Coordinating Committee to fulfill the NHIN Coordinating Committee’s obligations under the

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DURSA. Each Member of the NHIN Coordinating Committee will not, during the term of his or her tenure on the NHIN Coordinating Committee or thereafter, disclose to any person or entity, nor use for his or her business or benefit, any information obtained in connection with his or her performance of duties a Member of the NHIN Coordinating Committee.

- b. To the extent that the NHIN Coordinating Committee shares Confidential Participant Information with third parties that support the operations of the NHIN Coordinating Committee (e.g. consultants, legal counsel, advisors, support staff), it will ensure that these third parties agree to the same confidentiality restrictions as the Members of the NHIN Coordinating Committee.
 - c. If a Member of the NHIN Coordinating Committee is required by operation of law to disclose Confidential Participant Information, he or she will immediately notify the Chair of the NHIN Coordinating Committee and the Participant or Applicant that provided the Confidential Participant Information. Such notification will include the terms and circumstances surrounding such operation of law. The information in the notification must be sufficient to allow the Participant or Applicant to exercise its rights to object to such disclosure. If, after the Participant's or Applicant's objection, the Member is still required by law to disclose the Confidential Participant Information, he or she shall do so only to the minimum extent necessary to comply with the operation of the law and shall request that the Confidential Participant Information be treated as such.
7. *Destruction:* Hard copies of Confidential Participant Information shall be destroyed upon successful creation of an electronic version pursuant to #3 of this Procedure. Electronic versions of Confidential Participant Information shall be appropriately destroyed at the end of the retention period described in #4 of this Procedure.
8. *Protected Health Information:* The NHIN Coordinating Committee shall make every effort to perform its duties through the request, receipt and use of de-identified and/or aggregate data. If the NHIN Coordinating Committee determines that PHI is needed for the full exercise of its duties under the DURSA, it may request the needed PHI from the Applicant or Participant. The Applicant or Participant is not obligated to provide PHI to the NHIN Coordinating Committee in violation of applicable law. Should the NHIN Coordinating Committee request and receive PHI, it shall be kept separate from all other information received and/or maintained by the NHIN Coordinating Committee and shall be subject to additional restrictions and/or agreements as determined by legal counsel and the submitting Applicant or Participant.

IV. Definitions

Pursuant to Section 1(e) of the DURSA, "Confidential Participant Information" shall mean proprietary or confidential materials or information of a Discloser in any medium or format that a Discloser labels as such. Confidential Participant Information includes, but is not limited to: (i) the Discloser's designs, drawings, procedures, trade secrets, processes, specifications, source code, System architecture, processes and security measures, research and development, including, but not limited to, research protocols and findings, passwords

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and identifiers, new products, and marketing plans; (ii) proprietary financial and business information of a Discloser; and (iii) information or reports provided by a Discloser to a Receiving Party pursuant to this Agreement. Notwithstanding any label to the contrary, Confidential Participant Information does not include Message Content; any information which is or becomes known publicly through no fault of a Receiving Party; is learned of by a Receiving Party from a third party entitled to disclose it; is already known to a Receiving Party before receipt from a Discloser as documented by Receiving Party's written records; or, is independently developed by Receiving Party without reference to, reliance on, or use of, Discloser's Confidential Participant Information. Message Content is excluded from the definition of Confidential Participant Information because other provisions of the DURSA address the appropriate protections for Message Content.

DURSA: Data Use and Reciprocal Support Agreement

Secure Site: A secure web portal where information for NHIN Participants and NHIN Coordinating Committee members will be maintained.

All other capitalized terms, if not defined herein, shall have the same meaning as set forth in the DURSA or the NHIN Coordinating Committee Operating Policies and Procedures.

V. References

DURSA

VI. Related Policies and Procedures

Coordinating Committee General Operating Procedure, Review and Acceptance of NHIN Participants and Definitive Plans

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VII. Version History

	Date	Author	Comment
1	6/11/09	Randall E. Sermons	Original.
2	6/17/09	Randall E. Sermons	Per discussions with Mariann Yeager and Erin Whaley: Confidentiality flows for representatives from ONC and LCW clarified. Clarified applicability of policy to submissions of Confidential Information by Proposed Members. Added notification of Chair of NHIN Coordinating Committee in the event of compulsory disclosures. Clarified use of scanning and storing of Confidential Information in a secure area of the NHIN Portal. Added legal limitations to disclosures of PHI as well as paragraph on handling of PHI.
3	6/23/09	Randall E. Sermons	Per discussions with Mariann Yeager, Steve Gravely and Erin Whaley: Add "Accepting" Participants as a responsibility of the NHIN Coordinating Committee. Delete a request that Participants mark information as confidential to prevent issues with regard to classification of information by Federal Participants. Delete detailed procedures regarding handling of confidential information at meetings and certain other requirements regarding use and deletion of confidential information kept in electronic format.
4	11/29/09	Erin Whaley and Steve Gravely	Revised to conform to final version of the DURSA
5	12/4/09	Erin Whaley and Steve Gravely	Revised to incorporate comments from 12/1/09 OP&P Team call
6	12/23/09	Erin Whaley and Steve Gravely	Revised to incorporate comments from 12/8/09 OP&P Team call
7	1/25/10	Erin Whaley and Steve Gravely	Revised to incorporate comments from 1/21/10 Coordinating Committee meeting