

Pre-Decisional Draft. Not For Distribution.

Nationwide Health Information Network
NHIN Coordinating Committee

SUBJECT: BREACH NOTIFICATION		
STATUS: APPROVED by NHINCC	POLICY #: NHIN-CC: 7	
Date Approved: 1/21/2010	Version: 1	Page 1 of 5

I. Purpose

The privacy, security and integrity of Message Content exchanged through the NHIN are essential. To help maintain the privacy, security and integrity of Message Content and promote trust among Participants, each Participant has agreed to notify certain other Participants and the NHIN Coordinating Committee of a Breach. This policy sets forth the procedure by which a Participant and the NHIN Coordinating Committee will fulfill their respective Breach notification obligations under Section 16.03(a) of the DURSA.

II. Policy

Breaches, as defined in the DURSA, are very serious events. Each Participant has agreed that within 1 hour of discovering information that leads the Participant to reasonably believe that a Breach may have occurred, it will alert other Participants whose Message Content may have been Breached and the NHIN Coordinating Committee. The content of this alert is set forth in this Policy. As soon as reasonably practicable, but no later than twenty-four (24) hours after determining that a Breach occurred, the Participant will notify all Participants likely impacted by the Breach and the NHIN Coordinating Committee or its designee of such Breach and include the information specified in section 16.03 of the DURSA. Based on the information contained in the notification, the NHIN Coordinating Committee may provide a summary of the notification to all Participants and/or begin suspension proceedings against Participant(s) involved in the Breach.

III. Procedure

One Hour Breach Alert

1. Within one (1) hour of discovering information that leads the Participant to reasonably believe that a Breach may have occurred, the Participant will:
 - a. Upload an alert regarding the potential Breach to the portion of the Secure Site to which only Members of the Coordinating Committee have access and send an email to the NHIN Coordinating Committee through a dedicated e-mail address notifying the Committee that the alert has been uploaded. The dedicated email address shall be used solely for the purpose of Breach reporting. This e-mail address shall be designed to automatically forward the message to all NHIN Coordinating Committee Members and designated support staff that an alert has been uploaded to the Secure Site. The e-mail address will be published on the Secure Site so that all Participants will have access to it.
 - b. Send an alert to other Participants that, in the judgment of the Participant making the alert, may have had a Breach of Message Content. Alerts sent to other Participants should be sent to the address for the primary contact indicated in Attachment 4 of the DURSA.
2. The alert should include a brief description of the information that lead the Participant to reasonably believe that a Breach may have occurred, a list of other Participants whose Message Content may have been Breached, and a timeline for making a definitive determination on whether a Breach actually occurred. Participants are strongly urged to label the notification as Confidential Participant Information.
3. If, on the basis of the information that the Participant has, the Participant believes that it should temporarily cease exchanging Message Content with all other Participants through the NHIN, it may

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undergo a service level interruption or voluntary suspension in accordance with Operating Policy and Procedure 3 (Participation – Changes, Suspension, and Termination).

Twenty-Four Hour Breach Notification

1. As soon as reasonably practicable, but no later than twenty-four (24) hours after determining that a Breach occurred, the Participant will:
 - a. Upload the notification regarding the Breach to the portion of the Secure Site to which only Members of the Coordinating Committee have access and send an email to the NHIN Coordinating Committee through a dedicated e-mail address notifying the Committee that the notification has been uploaded. The dedicated email address shall be used solely for the purpose of Breach reporting. This e-mail address shall be designed to automatically forward the message to all NHIN Coordinating Committee Members that a notification has been uploaded to the Secure Site. The e-mail address will be published on the Secure Site so that all Participants will have access to it.
 - b. Send a notification to other Participants likely impacted by the Breach. Notifications sent to other Participants should be sent to the address for the primary contact indicated in Attachment 4 of the DURSA.
2. The notification should include sufficient information for the NHIN Coordinating Committee and other likely impacted Participants to understand the nature of the Breach. For instance, such notification could include, to the extent available at the time of the notification, the following information:
 - One or two sentence description of the Breach
 - Description of the roles of the people involved in the Breach (e.g. employees, Participant Users, service providers, unauthorized persons, etc.)
 - The type of Message Content Breached
 - Participants likely impacted by Breach
 - Number of individuals or records impacted/estimated to be impacted by the Breach
 - Actions taken by the Participant to mitigate the Breach
 - Current Status of the Breach (under investigation or resolved)
 - Corrective action taken and steps planned to be taken to prevent a similar Breach.

The notification shall not include any Protected Health Information (PHI). Participants are strongly urged to label the notification as Confidential Participant Information.
3. The Participant shall have a duty to supplement the information contained in the notification as it becomes available. Supplemental information should be uploaded to the Secure Site and directed to the same addresses used for the original notification. Participants are strongly urged to label the supplemental information as Confidential Participant Information.

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4. If, on the basis of the information that the Participant has, the Participant believes that it should temporarily cease exchanging Message Content with all other Participants through the NHIN, it may undergo a service level interruption or voluntary suspension in accordance with Operating Policy and Procedure 3 (Participation – Changes, Suspension, and Termination).

NHIN Coordinating Committee Disposition of Breach Alerts and Notifications

1. The NHIN Coordinating Committee Chair shall schedule a meeting of the Committee upon receipt of the Breach alert or notification for the purpose of reviewing the notification and determining the following:
 - a. the impact of the Breach or potential Breach on the privacy, security and integrity of Message Content exchanged through the NHIN;
 - b. whether the NHIN Coordinating Committee needs to take any action to suspend the Participant(s) involved in the Breach or potential Breach in accordance with Section 21.03 of the DURSA and the Change, Suspension and Termination Policy;
 - c. whether other Participants that have not been notified of the Breach or potential Breach would benefit from a summary of the notification or alert; or whether a summary of the notification or alert to the other Participants would enhance the security of the NHIN; and,
 - i. If the NHIN Coordinating Committee determines that a summary should be distributed to Participants, the NHIN Coordinating Committee will distribute such summary in a timely manner.
 - ii. This summary shall not identify any of the Participants or individuals involved in the Breach.
 - d. whether the NHIN Coordinating Committee should take any other measures in response to the notification or alert.
2. The NHIN Coordinating Committee is permitted to request additional information from the Participant(s) involved in the Breach or potential Breach to fulfill its responsibilities. However, with respect to potential Breach alerts, the NHIN Coordinating Committee is encouraged to hold inquiries and requests for additional information to allow the Participant time to determine whether a Breach actually occurred.
3. If, on the basis of the Breach alert or notification, a Participant desires to cease exchanging Message Content with Participant(s) involved in the potential or actual Breach, pursuant to Section 13.01(b) of the DURSA, such Participant must notify the Secretary of the NHIN Coordinating Committee of such cessation. The Secretary will notify Members of the Coordinating Committee of each cessation notification and keep a log of all such cessations for the NHIN Coordinating Committee's review.
4. Once complete information about the Breach becomes available, the NHIN Coordinating Committee will meet to determine whether the actions taken by the Participant(s) involved in the Breach are sufficient to mitigate the Breach and prevent a similar Breach from occurring in the future. Once the NHIN Coordinating Committee is satisfied that the Participant(s) have taken all appropriate measures, the NHIN Coordinating Committee will deem the Breach resolved.
 - a. This resolution will be communicated to all Participant(s) involved in the Breach and those

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Participants that ceased exchanging Message Content with the Participant(s) involved in the Breach.

- b. If those Participants do not resume the exchange of Message Content with the Participant(s) involved in the Breach, the Participant(s) involved in the Breach and cessation shall engage in the Dispute Resolution Process.

IV. Definitions

Pursuant to Section 1(c) of the DURSA, “Breach” shall mean the unauthorized acquisition, access, disclosure, or use of Message Content through the NHIN. The term “Breach” does not include the following:

- (i) any unintentional acquisition, access, disclosure, or use of Message Content through the NHIN by an employee or individual acting under the authority of a Participant or Participant User if—
 - (I) such acquisition, access, disclosure, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the Participant or Participant User; and
 - (II) such Message Content is not further acquired, accessed, used, or disclosed by such employee or individual; or
- (ii) any acquisition, access, use or disclosure of information contained in or available through the Participant’s System where such acquisition, access, use or disclosure was not directly related to transmission of Message Content through the NHIN.

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 pursuant to NHIN CC OP&P 6 (Information Handling).

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.

VI. References

DURSA

VII. Related Policies and Procedures

Changes, Suspension and Termination; Information Handling

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VIII. Version History

Date	Author	Comment
1 11/29/09	Erin Whaley and Steve Gravely	Original.
2 12/4/09	Erin Whaley and Steve Gravely	Revised to incorporate comments from 12/1/09 OP&P Team call.
3 12/23/09	Erin Whaley and Steve Gravely	Revised to incorporate comments from 12/8/09 OP&P Team call and cross reference to OP&P 3 for service level interruptions and voluntary suspensions.
4 1/22/10	Erin Whaley and Steve Gravely	Revised to incorporate minor stylistic changes as approved by Coordinating Committee during 1/21/10 call