CalHHS Data Exchange Framework Policy and Procedure

Subject: California Information Blocking Prohibitions	
Status: ~~Final~~ **Draft**	Policy: OPP-10
Publication Date: ~~July 10, 2023~~ **TBD**	Version: ~~1.0~~**1.0.1**

I.   Purpose

California Health and Safety Code ~~section~~ **§** 130290 was enacted in 2021 and establishes the creation of the California Health ~~and~~ **&** Human Services Data Exchange Framework ("Data Exchange Framework"), which requires certain data sharing among Participants. The purpose of this policy is to support the Data Exchange Framework's commitment to facilitating the timely Access, Exchange, and Use of Health and Social Services Information in compliance with Applicable Law.

II.   Policy

This policy prohibits Participants from undertaking any practice that is likely to interfere with Access, Exchange, or Use of Health and Social Services Information for the Required Purposes set forth in the Permitted, Required~~-~~**,** and Prohibited Purposes Policy and Procedure. Any Access, Exchange, and Use of Health and Social Services Information for a Required Purpose shall be without special effort on the part of the user in order to comply with this policy. This policy applies to all Participants.

This policy shall have no impact on or limit a Participant's responsibility, if any, to comply with the Federal Information Blocking Regulations or other Applicable Law.

This policy shall be effective as of January 31, 2024.

III.   Procedures

No Participant shall engage in Information Blocking. This policy applies certain provisions, as set forth below, of the Federal Information Blocking Regulations (45 C.F.R. Part 171, as may be amended) to all Health and Social Services Information Accessed, Used, or Exchanged for a Required Purpose. Participants shall be considered in compliance with this policy if they comply with the Federal Information Blocking Regulations, as outlined below. A Participant may also rely on current and future guidance from the federal government to interpret the requirements of the Federal Information Blocking Regulations.

For the purposes of this policy, when the Federal Information Blocking Regulations use the term "electronic health information," the term Health and Social Services Information shall also apply.

1.   **PARTICIPANTS SUBJECT TO THE FEDERAL INFORMATION BLOCKING REGULATIONS**

a.   If a Participant is subject to the Federal Information Blocking Regulations (45 C.F.R. Part 171, as may be amended), the Participant shall comply with the Federal Information Blocking Regulations with respect to Health and Social Services Information. The Participant shall be considered in compliance with this policy if the Participant is in compliance with the Federal Information Blocking Regulations, except as follows:

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   i. **Fees Exception.** Notwithstanding the fees exception in the Federal Information Blocking Regulations (45 C.F.R. § 171.302) ~~("Fees Exception"), a~~**, any fees charged by one** Participant ~~may not charge~~**to** another Participant ~~fees~~for the Access, Exchange, or Use of Health and Social Services Information ~~for a Required Purpose. However, a Participant that is a Health Information Exchange, Health Information Network, or Health IT Developer of Certified Health IT may charge other Participants fees for its services, provided that such fees are established~~**shall be** consistent with the Fees ~~Exception in the Federal Information Blocking Regulations, the Individual Access Services Policy and Procedure, and the Permitted, Required, and Prohibited Purposes~~Policy and Procedure.

   ii. **Licensing Exception.** Notwithstanding the licensing exception in the Federal Information Blocking Regulations (45 C.F.R. § 171.303) ("Licensing Exception"), a Participant may not license Interoperability Elements to another Participant in order for the other Participant to Access, Exchange, or Use Health and Social Services Information for a Required Purpose. However, a Participant that is a Health Information Exchange, Health Information Network, or Health IT Developer of Certified Health IT may license Interoperability Elements to other Participants, provided that such licenses are consistent with the Licensing Exception in the Federal Information Blocking Regulations **and the Fees Policy and Procedure**.

   iii. **Content and Manner Exception.** Notwithstanding 45 C.F.R. § 171.301(b)(1)(ii) and 45 C.F.R. § 171.301(b)(2)(ii) and (iii), ~~a~~**any fees charged by one** Participant ~~may not charge~~**to** another Participant ~~fees~~for the Access, Exchange, or Use of Health and Social Services Information ~~for a Required Purpose or~~**shall be consistent with the Fees Policy and Procedure, and a Participant may not** license Interoperability Elements to another Participant in order for the other Participant to Access, Exchange, or Use Health and Social Services Information for a Required Purpose except as permitted under Section ~~III(1)(a)(i) and~~**III(1)(a)**(ii) of this policy.

2. **PARTICIPANTS WHO ARE NOT SUBJECT TO THE FEDERAL INFORMATION BLOCKING REGULATIONS**

  a. If a Participant is not subject to the Federal Information Blocking Regulations (45 C.F.R. Part 171, as may be amended), the Participant shall still comply with the Federal Information Blocking Regulations with respect to Health and Social Services Information as described in this ~~Subsection~~**section** 2. A Participant's Behavior shall not be considered Information Blocking if the Participant meets one of the exceptions from the Federal Information Blocking Regulations, as described below.

  b. **Preventing Harm Exception.** A Participant's Behavior shall not be considered Information Blocking if the Participant meets the conditions of the Preventing Harm Exception (45 C.F.R. § 171.201, as may be amended) in the Federal Information Blocking Regulations. For purposes of this policy:

   i. Type of Risk. To meet the "Type of Risk" requirement in the Federal Information Blocking Regulations, a Participant may have the risk of harm determined by the professional judgment of a person who has a Professional Relationship with the Individual instead

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of a licensed health care provider if a Participant does not have a licensed health care provider on staff.

       ii.   Type of Harm. To meet the "Type of Harm" requirement in the Federal Information Blocking Regulations, a Participant must establish the type of harm was one that could serve as grounds for the Participant to deny access under Applicable Law and/or the Individual Access Services Policy and Procedure.

       c.   **Privacy Exception.** A Participant's Behavior shall not be considered Information Blocking if the Participant meets at least one sub-exception of the Privacy Exception (45 C.F.R. § 171.202, as may be amended) in the Federal Information Blocking Regulations. For purposes of this policy:

       i.   Denial of an Individual's Request for their Electronic Health Information. If an Individual or their Personal Representative requests access to their Health and Social Services Information, a Participant's denial of the Individual's request must be consistent with Applicable Law and the Individual Access Services Policy and Procedure.

       d.   **Security Exception.** A Participant's Behavior shall not be considered Information Blocking if the Participant meets the conditions of the Security Exception (45 C.F.R. § 171.203, as may be amended) in the Federal Information Blocking Regulations.

       e.   **Infeasibility Exception.** A Participant's Behavior shall not be considered Information Blocking if the Participant meets the conditions of the Infeasibility Exception (45 C.F.R. § 171.204, as may be amended) in the Federal Information Blocking Regulations.

       f.   **Health IT Performance Exception.** A Participant's Behavior shall not be considered Information Blocking if the Participant meets the requirements of the Health IT Performance Exception (45 C.F.R. § 171.205, as may be amended) in the Federal Information Blocking Regulations. For purposes of this policy, the Health IT Performance Exception shall apply to Health and/or Social Services IT Performance.

       g.   **Content and Manner Exception.** A Participant's Behavior shall not be considered Information Blocking if the Participant meets the conditions of the Content and Manner Exception (45 C.F.R. § 171.301, as may be amended) in the Federal Information Blocking Regulations. For purposes of this policy, notwithstanding 45 C.F.R. § 171.301(b)(1)(ii) and 45 C.F.R. § 171.301(b)(2)(ii) and (iii), ~~a~~ any fees charged by one Participant ~~may not charge~~ to another Participant ~~fees~~ for the Access, Exchange, or Use of Health and Social Services Information ~~for a Required Purpose or~~ shall be consistent with the Fees Policy and Procedure, and a Participant may not license Interoperability Elements to another Participant in order for the other Participant to Access, Exchange, or Use Health and Social Services Information for a Required Purpose except as permitted under Section III(1)(a)(i) ~~and (ii)~~ of this policy.

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IV.   References

45 C.F.R. §§ 160 and 164

45 C.F.R. Part 171

Health Insurance Portability and Accountability Act (HIPAA) of 1996

California Civil Code § 56.05

California Civil Code § 1798.140(v)

California Health and Safety Code § 123105(e)

California Health and Safety Code § 130290(f)

Fees Policy and Procedure

Individual Access Services Policy and Procedure

Permitted, Required~~-~~, and Prohibited Purposes Policy and Procedure

V.   Resources

The Office of the National Coordinator for Health Information Technology. Cures Act Final Rule: Information Blocking Exceptions

VI.   Version History

No.	Date	Author	Comment
1.0	July 10, 2023	CalHHS CDII	Final
1.0.1	XX	CalHHS CDII	Amended draft for public input (administrative changes only to remove language regarding charging of fees and to make certain formatting changes to be consistent with other P&Ps).