eHealth Exchange
DURSA Amendment

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Healtheway

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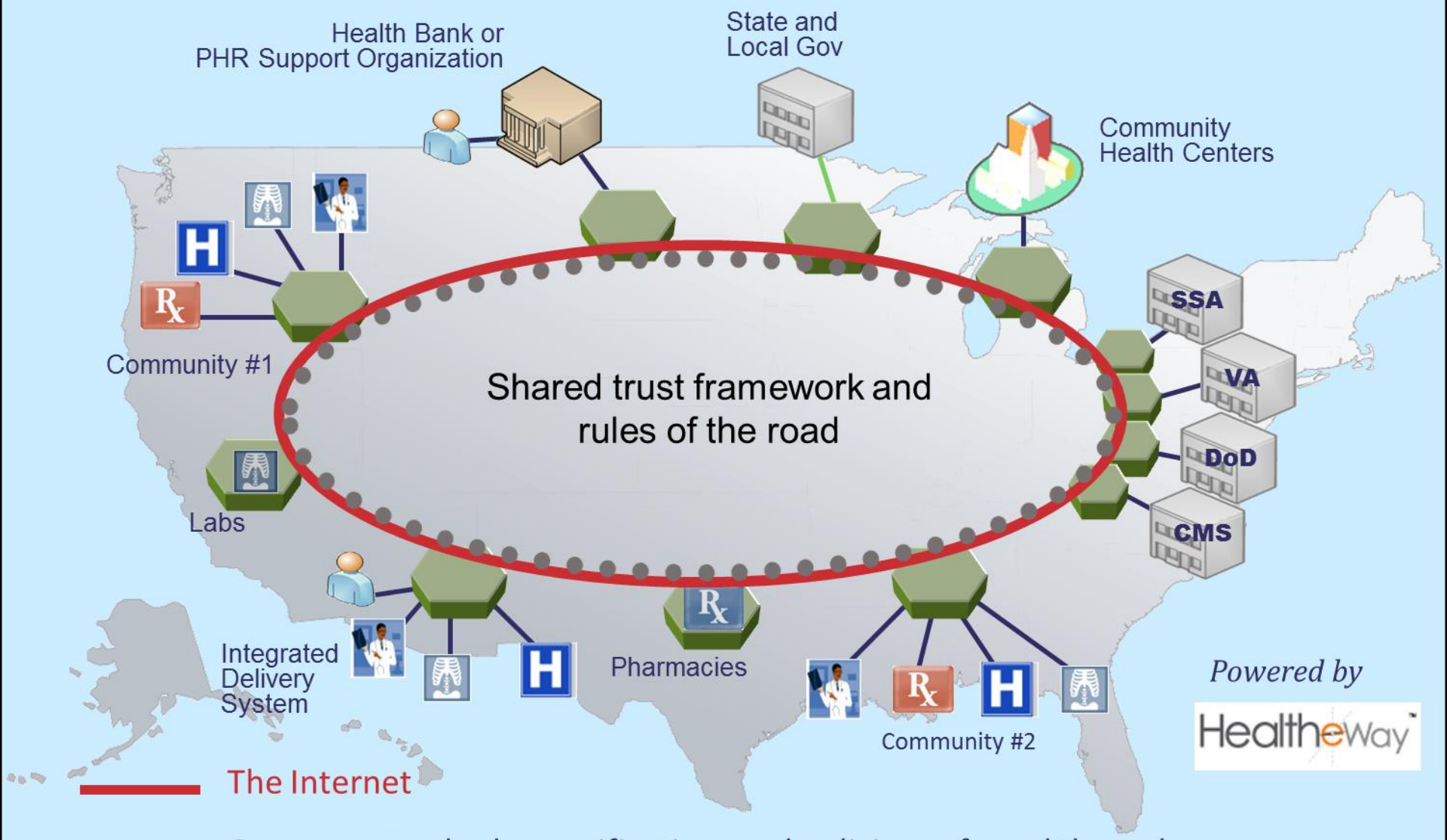
Topics

- eHealth Exchange Context
- DURSA Context & Provisions Overview
- Amendment 1 Summary
- Q&A

eHealth Exchange



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eHealth Exchange Growth

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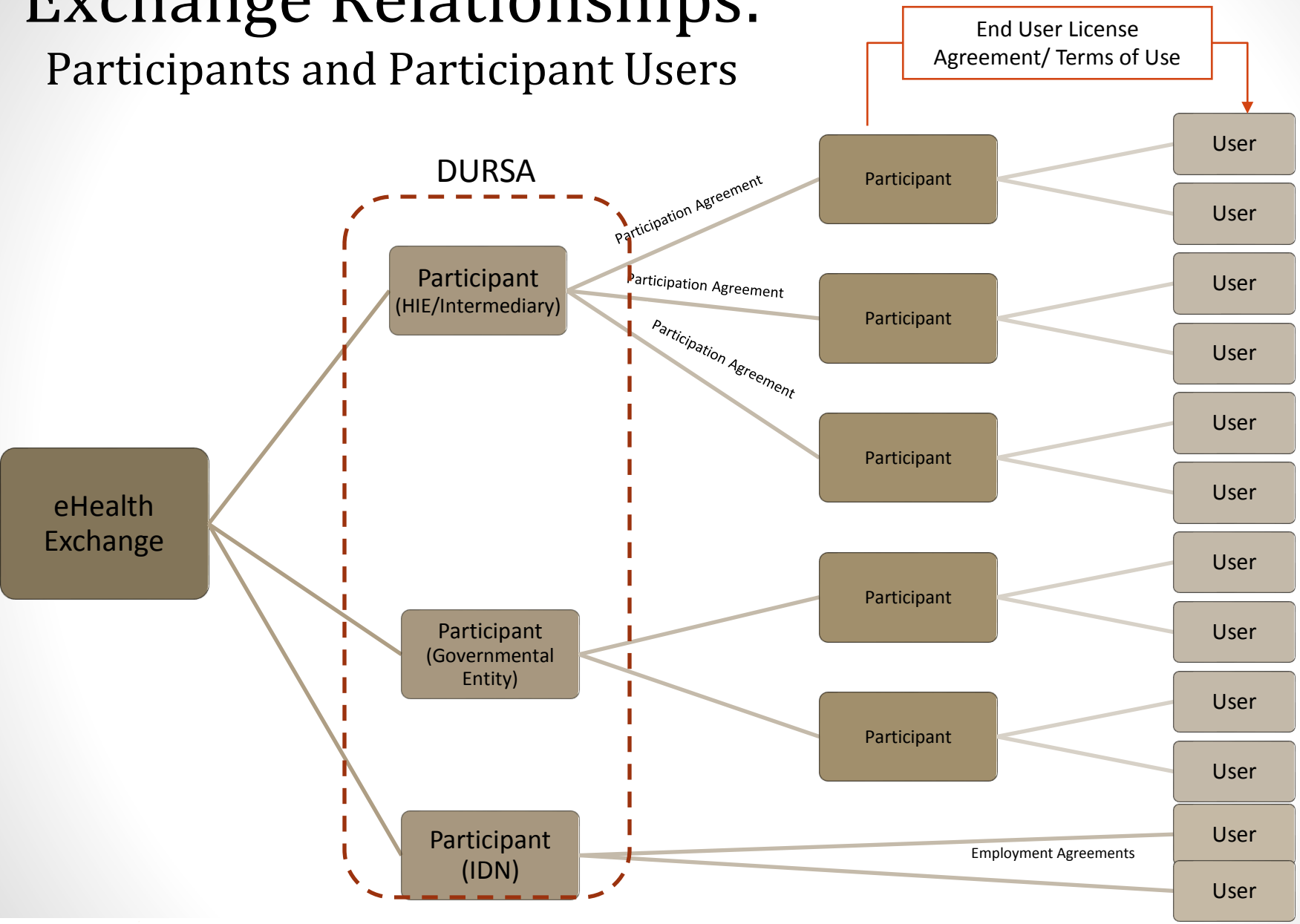
Exchange Relationships:

Participants and Participant Users



Developed by Troutman Sanders

DURSA

CONTEXT

What is the DURSA?

- A comprehensive, multi-party trust agreement that is signed by all eligible entities who wish to exchange data among Participants
- A scalable alternative to multiple "point-to-point" agreements, which not sustainable for widespread information exchange
- Requires signatories to abide by common set of terms and conditions that establish Participants' obligations, responsibilities and expectations
- The obligations, responsibilities and expectations create a framework for safe and secure health information exchange, and are designed to promote trust among Participants and protect the privacy, confidentiality and security of the health data that is shared
- The DURSA was developed through an intensive effort facilitated by ONC, with consensus among a diverse group of private and state entities and federal agencies. As a living document, the agreement will be modified over time under the direction of the Coordinating Committee.

Important Terms

- **Applicable Law**: the law of the jurisdiction in which the Participant operates
  - For non-Federal Participants, this means the law in the state(s) in which the Participant operates and any applicable Federal law.
  - For Federal Participants, this means applicable Federal law.
- **Message**: electronic transmission of Message Content Transacted between Participants using the Specifications
- **Message Content**: information contained within a Message or accompanying a Message
- **Participant**: a signatory to the DURSA
- **Participant Users**: any person who is authorized to Transact Message Content through the respective Participant's system
- **Permitted Purposes**: the reasons for which Participants may legitimately Transact Message Content
- **Performance & Service Specifications**: technical specifications and testing requirements adopted by the Coordinating Committee to prescribe data content, technical and security requirements, and test plans for the Participants
- **Submitter**: the Participant who submits Message Content through a Message to a Recipient for a Permitted Purpose
- **Transact**: to send, request, receive, assert, respond to, submit, route, subscribe to, or publish Message Content during the Specifications

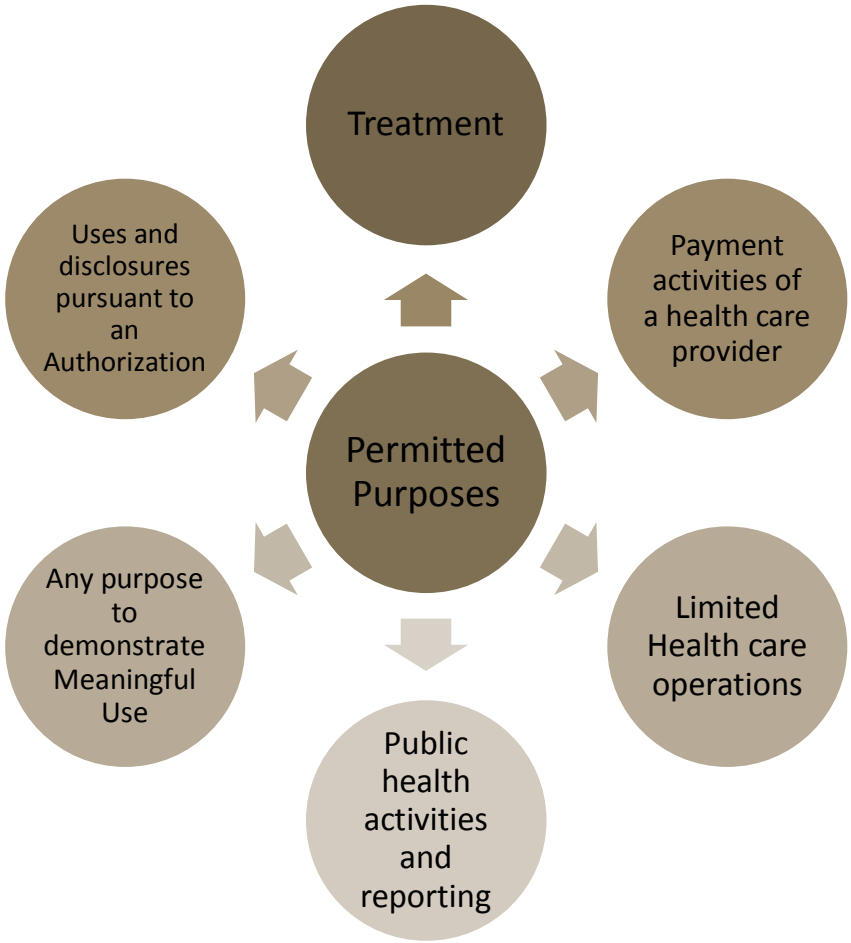
Basic Premises

- Assumes that each Participant has trust relationships in place with its agents, employees and data connections (end users, systems, data suppliers, networks, etc.).
- Each Participant must comply with Applicable Law. Nothing in the DURSA is intended to conflict with Applicable Law.
- Each Participant will comply with the HIPAA Privacy and Security rules either because it is a Covered Entity, a Business Associate or because it is required to do so by the DURSA.
- The Coordinating Committee provides oversight of eHealth Exchange and support for the Participants.
- Participants choose which use cases they wish to support in production, which includes a variety of exchange methods, such as: push, query / retrieve and publish/subscribe. The DURSA is written to apply to all types of transactions, not just query/retrieve.

DURSA "Highlights"

- Performance and Service Specifications
- Operating Policies and Procedures (OPPs)
- DURSA Flow-Down Provisions (Sections 15.04 & 15.05)
- Autonomy Principle
  - Participants determine their own access policies based on Applicable Law and business practices.
  - These access policies are used to determine whether and how to Transact Message Content.
- Identification and Authentication
  - Identity Proof Users
  - Authenticate Users
- Permitted Purposes
- Duty to Respond for Treatment
- Consent and Authorization
- Submitter Responsibilities
- Future Use of Data
- Breach: Definition & Reporting
- Self-Auditing Capability
- Allocation of Risk
- Representations and Warranties

Exchange Only for "Permitted Purposes"



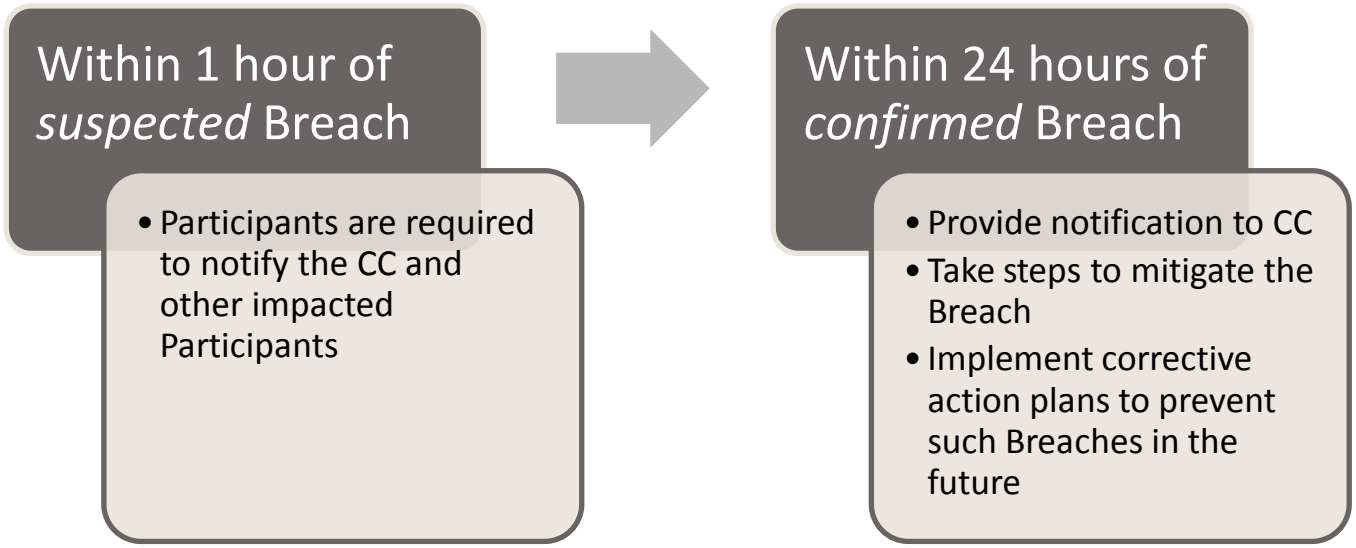
The DURSA limits treatment, payment and operations beyond what HIPAA permits.

Breach: Definition

- **Breach:** "the unauthorized acquisition, access, disclosure, or use of Message Content **while Transacting such Message Content**"
- A breach does not include either of the following:
  1. **any unintentional acquisition, access, disclosure**, or use of Message Content by an employee or individual acting under the authority of a Participant or Participant User **if** —
     - Made in good faith and within the course / scope of that individual's employment / engagement; and
     - The information is not further acquired, accessed, disclosed or used by the individual;
  2. any acquisition, access, disclosure or use of information contained in or available through the Participant's System that was not ***directly related to Transacting Message Content***.
- The breach reporting process is NOT intended to address any obligations for notifying consumers of breaches, but simply establishes an obligation for Participants to notify each other and the Coordinating Committee when Breaches occur to facilitate an appropriate response.

Breach Reporting

- Participants are required to notify the eHealth Exchange Coordinating Committee and other impacted Participants of Breaches within specific timeframes.



DURSA

AMENDMENT 1 SUMMARY

Ongoing Role of Charter Participant Representatives on the CC

- DURSA requires that the Coordinating Committee revisit the ongoing role of Charter Participant Representatives
  - *Until September 30, 2014, each of the Charter Participants shall be entitled to appoint one individual to serve as that Charter Participant's representative on the Coordinating Committee so long as the Charter Participant continues to be a Participant. Prior to September 30, 2013, the Coordinating Committee shall determine a process for evaluating continuation of the Charter Participants' representation on the Coordinating Committee after September 30, 2014.*
- Process
  - Healtheway legal counsel explored options and presented recommendations
  - Draft recommendation presented to participants
  - Recommendations presented to the Coordinating Committee and draft DURSA amendment to Section 4
  - Approval through Coordinating Committee and change process – In Process
  - Implement recommendations prior to September 30, 2014

Affiliation Groups

- The DURSA defines an “Affiliation Group” is
  - All those Non-Federal Participants who are eligible to Transact Message Content in connection with a contract, grant, or cooperative agreement issued by the same Federal agency; **OR**
  - A Federal Participant and those Non-Federal Participants who are Transacting Message Content with it
- Federal contracts and grants are ending
- Affiliation Group concept no longer relevant
- New approach developed to enable diverse group of participants to have representation on the Coordinating Committee

DURSA Section 4.02 - Composition of the Coordinating Committee

Current Language

- The Coordinating Committee shall be composed of representatives of the Charter Participants and the Affiliation Groups as described more specifically herein. The Coordinating Committee is authorized to adopt, pursuant to the process in Section 11.03, Operating Policies and Procedures that modify the composition of the Coordinating Committee in response to a change in Federal law or regulation that results in a modification of the Participant eligibility requirements set forth in the Operating Policies and Procedures.

Amendment 1 – Removed concept of Charter Participants & Affiliation Groups

- The Coordinating Committee shall be composed primarily of representatives of the Participants. To allow for future flexibility in response to the evolving health information exchange environment, the exact composition of the Coordinating Committee shall be set forth in Operating Policies and Procedures adopted pursuant to the process in Section 11.03, Operating Policies and Procedures Change Process.

Next Steps

DURSA Amendment

- Submit DURSA Amendment for Non-Federal Participant Signature – 6/2
- DURSA Objection Period Ends – July 1
  DURSA Approvals Received – NLT 9/1
- **Target Effective Date – September 30**

OPP#2

- 30 Day Notice to Participants for Comment – May 2
- Objection Period Ends – June 1
- **Target Effective Date – June 2**

All participants must execute amendment before 9/30/14 to remain a participant

OPP#2 – Coordinating Committee General Operating Procedure Changes

- Section III. Procedures in OPP#2 were revised to reflect the modified Coordinating Committee composition as outlined in DURSA Section 4.02:
  - Membership
  - Selection of Representatives
  - Terms of Office

Updated Provision (III): Membership of the Coordinating Committee

Section III.A. - Current

- Charter Participant Representatives
  - 5 Federal Charter Participant Representatives
  - 5 Non-Federal Charter Participant Representatives
- Affiliation Groups (SSA, VLER, State HIE, CMS ESRD)
  - One representative from each Affiliation Group unless otherwise authorized by the CC.
- One ex officio, non-voting representative from ONC.

Section III.A. Changes

- Up to 5 Federal Participant Representatives
- 9 Non-Federal Participant Representatives (includes all Participants that are not Federal agencies (e.g. health systems, state HIEs, regional HIEs, vendor networks).
- One ex officio, non-voting representative from ONC
- One ex officio, non-voting representative from the Healtheway Board of Directors ("Healtheway Representative").

New Provision: Nominating Committee (III.B.2)

a. The Coordinating Committee will establish a Nominating Committee. The Nominating Committee will be tasked with soliciting nominations for Federal Participant Representatives and Non-Federal Participant Representatives from the respective group of Participants whenever there is an upcoming vacancy on the Coordinating Committee because a current Representative's term is ending. To be accepted as a nominee, the individual must meet the qualifications set forth in Section III.B.1 of this Policy. Any individual nominated as a Federal Participant Representative must be nominated by the federal agency that employs or engages the individual.

b. The Nominating Committee will not evaluate nominations for the Federal Participant Representative seats. It will send the names of all nominees to Healtheway, which will facilitate the Federal Participant voting process as set forth in Section III.B.4. The Nominating Committee will use evaluation criteria provided by the Coordinating Committee to evaluate all nominations received for Non-Federal Participant Representative seats. Evaluation criteria may assess nominee qualifications, experience with production health information exchange, representation of other Participants, and level of participation in eHealth Exchange. The Nominating Committee may allow an opportunity for nominee(s) to discuss their qualifications with the Nominating Committee. After evaluating the nominees for the Non-Federal Participant Representative seats, the Nominating Committee will propose a slate of Non-Federal Participant Representatives to the Coordinating Committee.

c. For those elections occurring in 2014, the Nominating Committee will be the Healtheway Board of Directors. For all subsequent elections, the Nominating Committee will be appointed by the Coordinating Committee.

New Provision: III.B.3 – Election of Non-Federal Participants

a. **Coordinating Committee Endorsement.** The Coordinating Committee will review the slate of Non-Federal Participant Representatives proposed by the Nominating Committee. The Coordinating Committee may allow an opportunity for nominee(s) to discuss their qualifications with the Coordinating Committee. The Coordinating Committee may endorse the slate or modify the slate prior to endorsing it. Once a slate is endorsed by the Coordinating Committee, it will be put before the Participants for a vote.

b. **Non-Federal Participant Voting:** Non-Federal Participants will be presented with the slate of Non-Federal Representative candidates endorsed by the Coordinating Committee. All Non-Federal Participants will be entitled to one vote for each open seat in the election, but shall not be entitled to aggregate such votes. Non-Federal Participants may use one or more votes to write-in individuals who do not appear on the slate. Non-Federal Participants may cast votes via email, phone, survey tool and/or other mechanism. Such voting shall be coordinated through Healtheway. Voting shall be open for a minimum of five (5) business days. The Non-Federal Participant Representative nominees who receive the highest number of votes will be elected to serve on the Coordinating Committee. Should there be a tie, the Coordinating Committee shall hold a run-off election and collect votes from each Non-Federal Participant.

New Provision: III.B.4 & 5 – Election of Federal Participants

4. **Election of Federal Participant Representatives**: Federal Participants will be presented with the list of Federal Representative nominees. All Federal Participants will be entitled to one vote for each open seat in the election, but shall not be entitled to aggregate such votes. Federal Participants may use one or more votes to write-in individuals who do not appear on the list. Federal Participants may cast votes via email, phone, survey tool and/or other mechanism. Such voting shall be coordinated through Healtheway. Voting shall be open for a minimum of five (5) business days. The Federal Participant Representative nominees who receive the highest number of votes will be elected to serve on the Coordinating Committee. Should there be a tie, the Coordinating Committee shall hold a run-off election and collect votes from each Federal Participant.
5. **Vacancies:** A vacancy on the Coordinating Committee will occur whenever a Federal Participant Representative or Non-Federal Participant Representative on the Coordinating Committee resigns, is removed or the individual no longer has the authority to act on behalf of the Participant regarding the eHealth Exchange (e.g., the representative's working relationship with Participant changes or terminates). If a Participant has an employee or contractor that is serving as a Federal Participant Representative or Non-Federal Participant Representative, the Participant will provide as much advance notice as possible to the Coordinating Committee of any upcoming change in the employee or contractor's role with the Participant to the extent that such change would cause the employee or contractor to fail to meet the qualifications set forth in Section III.B.1.a of this Policy. Any vacancy will be filled during the next scheduled election of Coordinating Committee representatives.

New Provision: III.B.7 – Selection of Healtheway Representative

7. **Selection of Healtheway Representative**: The Healtheway Board shall annually appoint a non-voting representative to the Coordinating Committee. The appointed Healtheway Representative shall be permitted to send a designee to any meetings of the Coordinating Committee if the Healtheway Representative is unable to participate in that meeting. Healtheway may change its representative from time to time but is encouraged to minimize

Section III.C. – Terms of Office

1. **Federal Participant Representative:** Each Federal Participant Representative will serve a term of one year. Individuals are allowed to succeed themselves if re-elected in accordance with Section III.B of this Policy.
2. **Non-Federal Participant Representative**: Beginning with the term commencing in 2014, the Non-Federal Participant Representatives shall be randomly divided into **3** equal groups to begin the staggering of terms. Those assigned to Group 1 shall have an initial term of 1 year. Those assigned to Group 2 shall have an initial term of 2 years. Those assigned to Group 3 shall have an initial term of 3 years. Following this initial term, each Non-Federal Participant Representative shall serve a term of three years. Individuals are allowed to succeed themselves if re-elected in accordance with Section III.B of this Policy.
4. **Healtheway Representative**: The term of office for the Healtheway Representative shall be for one year unless Healtheway changes the Healtheway Representative. The Healtheway Representative shall serve ex officio. Individuals are allowed to succeed themselves if reappointed in accordance with Section III.B.3 of this Policy.

Updated Provision: Section III.D.1 & 2 - Chairperson, Vice Chairperson, and Secretary

2. The Coordinating Committee will determine whether to have one ballot for both the Chairperson and Vice Chairperson or to first elect the Chairperson and then have a second ballot to elect the Vice Chairperson. In the event that there are multiple persons seeking an office, and no person receives a majority of votes on the first ballot, then a second ballot shall be voted upon between the two persons who received the highest vote totals on the first ballot.

Reference: OPP #2: Summary of Changes (1)

- OPP #2 – Coordinating Committee General Operating Procedure
  - Section III. Procedures in OPP#2 were revised to reflect the modified Coordinating Committee composition as outlined in DURSA Section 4.02:
  - III.A. - Membership of Coordinating Committee: revised to reflect 5 federal and 9 non-federal elected members. No change to ONC representation. Added non-voting seat for Healtheway representative.
  - III.B.1 – Details qualifications of Federal Participant Representatives and Non-Federal Participant Representatives
  - III.B.2 – Added provision added for a Nominating Committee to more formally facilitate nomination process.
  - III.B.3 – Added provision added to clarify election process for Non-Federal Participant Representatives
  - III.B.4 – Added provision added to clarify election of Federal Participant Representatives
  - III.B.5 – Added provision added for Vacancies
  - III.B.7. – Added provision added for selecting the Healtheway Representative.

Reference: OPP #2: Summary of Changes (2)

- III.C.1 – Added provision for term of Federal Representative
- III.C.2. – Added staggered terms for elected Coordinating Committee Non-Federal Participant representatives to assure continuity of CC leadership.
- III.C.4. – Added provision for term of Healtheway Representative.
- III.D.1 & 2 – Clarified the process for selecting a Chairperson and Vice Chairperson.
- III.B.4: Added the word Federal in the last sentence as this pertains to the Federal Participants.
- III.D.2: Updated the method in which participants can cast votes to be consistent with paragraph III.B.3.b and III.B.4. The language in the first sentence of III.D.2. was changed from "via phone, email or online survey" to "via email, phone, survey tool and/or other mechanism."

Resources

- eHealth Exchange Wiki: http://ehealthexchange.wikispaces.com/
  - Documents Posted for 30 Day Comment Period
    - **Proposed Amendment 1 to the DURSA (CC Composition)**
    - **Revised OPP#2 - Coordinating Committee General Operating Procedures**
- Onboarding Resources: http://www.healthewayinc.org/index.php/exchange/onboarding
    - **DURSA Webinar**

Discussion

For more information:

Healtheway

Web Site: www.healthewayinc.org

E-mail: admin “at” healthewayinc.org