

DEPARTMENT OF HEALTH AND SOCIAL SERVICES



PROPOSED CHANGES TO REGULATIONS

7 AAC 166. HEALTH INFORMATION EXCHANGE.



PUBLIC REVIEW DRAFT

September 25, 2013

COMMENT PERIOD ENDS: November 6, 2013
Please see public notice for details about how to
comment on these proposed changes.

Notes to reader:

1. Except as discussed in note 2, proposed new text that amends an existing regulation is **bolded and underlined**.
2. If the lead-in line states that a new section, subsection, paragraph, subparagraph, or clause is being added, or that an existing section, subsection, etc. is being repealed and readopted (replaced), the new (or replaced) text is not bolded or underlined.
3. [ALL-CAPS TEXT WITHIN BRACKETS] indicates text that is proposed to be deleted.
4. When the word “including” is used, Alaska Statutes provide that it means “including, but not limited to.”

Title 7. Health and Social Services.

7 AAC is amended by adding a new chapter to read:

Chapter 166. Health Information Exchange.

Section

- 10. Creation of health information exchange system
- 20. Governing body; membership
- 30. Duties of the governing body
- 40. Privacy and security
- 50. Opt out provisions
- 900. Definitions

7 AAC 166.010. Creation of health information exchange system. (a) A statewide electronic health information exchange system is established.

(b) The purpose of the HIE system is to facilitate

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(1) permissible public and private uses and disclosures of electronic health information; and

(2) the intra- and interstate exchange of information for treatment and payment purposes. (Eff. ____/____/2014, Register ____)

Authority: AS 18.23.300

7 AAC 166.020. Governing body; membership. (a) The voting members of the governing body of the designee under AS 18.23.300 shall be nominated as follows:

(1) the hospital and nursing home facility representative shall be nominated by the Alaska State Hospital and Nursing Home Association;

(2) the private medical care providers' representative shall be nominated by the Alaska State Medical Association;

(3) the community-based primary care providers' representative shall be nominated by the Alaska Primary Care Association;

(4) the federal healthcare providers' representative shall be nominated by the Alaska Federal Healthcare Partnership;

(5) the Alaska tribal health organizations' representative shall be nominated by the Alaska Native Health Board;

(6) the health insurers' representative shall be nominated by the Alaska Comprehensive Health Insurance Association;

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(7) the healthcare consumers' representative shall be nominated by one of the following groups:

- (A) the Alaska chapter of AARP;
- (B) the Alaska chapter of the American Civil Liberties Union;
- (C) the Alaska Mental Health Board;
- (D) the American Cancer Society Alaska; or
- (E) the United Way of Alaska;

(8) the employers' or business representative shall be nominated by the Alaska Chamber of Commerce.

(b) A member of the public may nominate an individual in any category under (a) of this section upon proof of the individual's membership in that category.

(c) The two nonvoting liaison members shall serve three-year terms and shall be selected as follows:

(1) the nonvoting liaison member representing the Board of Regents of the University of Alaska;

(2) the nonvoting liaison member representing the commission established in the governor's office to review healthcare policy shall be appointed by the governor.

(d) HIE participants shall elect the voting members of the governing body at the annual meeting. Members of the governing body shall elect the officers of the governing body.

(e) Voting members of the governing body shall serve three-year terms so that one-third of the total number of members will change each year. A member may not serve more than two

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consecutive terms. The commissioner of the Department of Health and Social Services and the two nonvoting liaison members are not subject to the two-consecutive term limit.

(f) A member of the governing body shall only represent the interests of the group that member was elected or chosen to represent.

(g) Regular meetings of the governing body are subject to the Alaska Open Meetings Act and must be conducted in accordance with the current edition of Robert's Rules of Order Newly Revised. (Eff. ____/____/2014, Register ____)

Authority: AS 18.23.300

7 AAC 166.030. Duties of the governing body. The governing body shall

(1) subject to approval by the department, set the user fee at an amount that attains self-sustainability for the HIE system;

(2) inform the public via print and electronic media at least twice per year about the benefits and risks of participation in an HIE;

(3) develop policies and procedures that comply with AS 18.23.300 – 18.23.325 and 7 AAC 166.010 – 7 AAC 166.900, including policies and procedures regarding

(A) HIE patient information submitted in error;

(B) opting out and opting back into an HIE;

(C) notification required by law of a breach of information by an HIE;

(D) audit reports;

(E) protecting the privacy and security of electronic health information;

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(F) access to and use and disclosure of electronic health information;

(G) amendment and storage of electronic health information; and

(H) sanctions; and

(4) process opt out requests forwarded by HIE participants.

(Eff. ____/____/2014, Register ____)

Authority: AS 18.23.300 AS 18.23.305 AS 18.23.310

7 AAC 166.040. Privacy and security. (a) An individual's individually identifiable health information on an HIE is the property of the individual.

(b) Individually identifiable health information located on an HIE is confidential and not public information subject to the public records requirements of AS 40.25.100 – 40.25.350.

(c) An HIE shall comply with the requirements of P.L. 104-191 (Health Insurance Portability and Accountability Act of 1996 (HIPAA)), P.L. 111-5 (Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009), 42 C.F.R. Part 2, and 45 C.F.R. Parts 160 and 164. An HIE shall make any patient authorization required by the provisions in this subsection available on the HIE.

(d) An HIE shall not allow an HIE participant to alter electronic health information in any way.

(e) In AS 18.23.310,

(1) "treatment" means

(A) the provision, coordination, or management of health care and related

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services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care from one health care provider to another; and

(B) health care operations related to patient care and safety,
including

(i) case management and care coordination;

(ii) contacting health care providers and patients with
information about treatment alternatives;

(iii) conducting training programs in which students,
trainees, or practitioners in areas of health care learn under supervisions to
practice or improve their skills as health care providers;

(iv) resolution of HIE-related grievances; and

(v) any reporting permitted under P.L. 104-191 (Health
Insurance Portability and Accountability Act of 1996 (HIPAA)), P.L. 111-
5 (Health Information Technology for Economic and Clinical Health
(HITECH) Act of 2009), 42 C.F.R. Part 2, and 45 C.F.R. Parts 160 and
164, including public health reporting and reporting on clinical quality
measures or other measures related to demonstrating “meaningful use” to
the Centers for Medicare and Medicaid Services (CMS); and
(2) “billing” has the same meaning as “payment” in 45 C.F.R. 164.501.

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(Eff. ____/____/2014, Register ____)

Authority: AS 18.23.300 AS 18.23.305 AS 18.23.310

7 AAC 166.050. Opt-out provisions. (a) An individual has the right to opt out of an HIE. If an individual opts out of an HIE, the HIE shall remove all of that individual's electronic health information from the HIE, except any electronic health information required by law for health care reporting purposes.

(b) The governing body shall establish procedures for an HIE, including procedures for

(1) opting out of an HIE;

(2) preventing storage of an individual's electronic health information after the date the individual opts out, except as required by law;

(3) allowing dissemination of individually identifiable health information for emergency treatment purposes in the case of a medical emergency, as authorized by an individual;

(4) destroying or securing against unauthorized access to an individual's electronic health information once an individual opts out;

(5) training health care workers and HIE staff responsible for processing an individual's request to opt out; and

(6) notifying an individual in the event an HIE discloses an individual's electronic health information after that individual opts out of an HIE.

(c) The governing body shall ensure that the following information is easily accessible on its internet site:

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(1) a description of how and where to opt out of an HIE;

(2) a description of how and where to opt back into an HIE after an individual has opted out of that HIE.

(d) An HIE participant shall document an individual's request to opt out and forward that request to the governing body, which shall process the request. Electronic health information may be stored on an HIE prior to obtaining an opt out request from an individual but may not be disclosed after an individual opts out, except as required by law.

(e) A health care provider may not deny an individual treatment and a health plan may not deny an individual an insurance benefit based solely on the provider's or individual's decision not to participate in an HIE. (Eff. ____/____/2014, Register ____)

Authority: AS 18.23.300 AS 18.23.305 AS 18.23.310

7 AAC 166.900. Definitions. In 7 AAC 166.010 – 7 AAC 166.900, unless the context indicates otherwise,

(1) "electronic health information" means an individual's information located on an HIE, including an individual's individually identifiable health information;

(2) "HIE participant" means an entity or facility that has paid a participation fee to an HIE;

(3) "HIE system" means the system of statewide HIEs established under AS 18.23.300;

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(4) “individually identifiable health information” means information, including demographic information collected from an individual, that

(A) is created or received by a health care provider or health plan; and

(B) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) that identifies the individual; or

(ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual. (Eff. ____/____/2013,

Register _____)

Authority: AS 18.23.300 AS 18.23.305 AS 18.23.310