



# Mass HIway

## Massachusetts Health Information Highway

### Statewide Health Information Exchange

---

## Policies & Procedures

**Version 4**

**Effective: December 1, 2017**



The Mass HIway is operated by the Commonwealth of Massachusetts' Executive Office of Health and Human Services (EOHHS). For more information [www.masshiway.net](http://www.masshiway.net).

**Record of Changes**

Version Number	Date	Description of Change	Author/ Editor
1	October 28, 2012	Original release	EOHHS
2	December 1, 2014	<p>Significant update to the Mass HIway Policies &amp; Procedures version 1.</p> <ul style="list-style-type: none"> <li>• Alignment of policies with Nationwide Privacy and Security Framework for Electronic Exchange of Individually Identifiable Health Information framework</li> <li>• Codification of various Mass HIway policies, procedures and practices based on Mass HIway operational experience.</li> </ul>	EOHHS
3	November 18, 2016	<p>Draft version 3 posted for public reference and subject to change, pending promulgation of final regulations at 101 CMR 20.00.</p> <p>Significant update to the Mass HIway Policies &amp; Procedures version 2.</p> <ul style="list-style-type: none"> <li>• Alignment of policies &amp; procedures with proposed regulations at 101 CMR 20.</li> <li>• Streamlining of Mass HIway documentation and contracts.</li> <li>• Updating of procedures and practices to reflect changes in the healthcare information technology environment.</li> </ul>	EOHHS
3	February 10, 2017	Final release of updated Mass HIway Policies & Procedures version 3.	EOHHS
4	December 1, 2017	Revised Sections 5.2 and 5.3 to clarify attestation process and Section 14.1 to add categories to rate card.	EOHHS

## Table of Contents

<b>1. Policies &amp; Procedures Update Summary.....</b>	<b>7</b>
<b>2. Introduction and Definitions.....</b>	<b>7</b>
<b>2.1 Introduction to the Mass HIway Policies &amp; Procedures .....</b>	<b>7</b>
<b>2.2 Mass HIway Users and Access Providers - Definitions .....</b>	<b>7</b>
2.2.1 Mass HIway User (“User”).....	7
2.2.2 HIway Participant (“Participant”).....	8
2.2.3 Non-Participant User (“Non-Participant User”).....	8
2.2.4 HIway Trusted Health Information Service Provider (“HIway Trusted HISP”).....	8
2.2.5 Mass HIway Integrator (“Integrator”) .....	9
2.2.6 Access Administrator (“Access Administrator”).....	9
2.2.7 Authorized Personnel (“Authorized Personnel”).....	9
<b>2.3 Mass HIway Agreement Types - Definitions .....</b>	<b>9</b>
2.3.1 Participation Agreement (“Participation Agreement”).....	9
2.3.2 Business Associate Agreement (“Business Associate Agreement”) .....	9
2.3.3 HISP Agreement (“HISP Agreement”) .....	10
2.3.4 Integrator Agreement (“Integrator Agreement”) .....	10
<b>2.4 Other Terms Used In Policies &amp; Procedures - Definitions .....</b>	<b>10</b>
2.4.1 HIPAA Privacy and Security Rules (“HIPAA Privacy and Security Rules”).....	10
2.4.2 HIway Provider Directory or Provider Directory or PD (“HIway Provider Directory” or “Provider Directory” or “PD”).....	10
2.4.3 Individual Patient (“Individual” or “Patient”) .....	10
<b>3. Authority, Scope, and Application .....</b>	<b>10</b>
<b>3.1 Authority.....</b>	<b>10</b>
<b>3.2 Amendment .....</b>	<b>10</b>
<b>3.3 Scope and Application .....</b>	<b>11</b>
<b>3.4 Acceptance of Terms.....</b>	<b>11</b>
<b>3.5 Audits to Verify Proper Use of Mass HIway .....</b>	<b>11</b>
<b>3.6 Legal Identity of Participant.....</b>	<b>11</b>
<b>3.7 Merger, Acquisition, or Divestiture of Participant.....</b>	<b>11</b>
<b>3.8 Defining and Describing Participants .....</b>	<b>11</b>
<b>4. Description of Services .....</b>	<b>12</b>
<b>4.1 Direct Messaging.....</b>	<b>12</b>
4.1.1 Technical Assessment & Connectivity Recommendation .....	12
4.1.2 Participant Authentication .....	12
4.1.3 Certificate Authority .....	12
4.1.4 Connection to Mass HIway for Direct Messaging.....	12
4.1.5 Connection to Other Health Information Exchanges.....	13
4.1.6 Direct Address Authority .....	13
4.1.7 Provider Directory .....	13

4.1.8	Message Transformation.....	13
4.1.9	Training, Education, and Documentation .....	13
4.1.10	Technical Support .....	13
4.1.11	Reports .....	13
<b>4.2</b>	<b>HIway-Sponsored Services.....</b>	<b>13</b>
4.2.1	Relationship Listing Service or RLS .....	14
4.2.2	Event Notification Service .....	14
<b>5.</b>	<b>HIway Connection Submissions Requirements .....</b>	<b>14</b>
<b>5.1</b>	<b>Implementation of HIway Direct Messaging.....</b>	<b>14</b>
<b>5.2</b>	<b>Reporting Implementation of HIway Direct Messaging .....</b>	<b>14</b>
<b>5.3</b>	<b>Annual Requirements for Use of the Mass HIway .....</b>	<b>15</b>
<b>5.4</b>	<b>Use Cases and Examples .....</b>	<b>15</b>
<b>6.</b>	<b>Data Collection, Use, and Disclosure.....</b>	<b>16</b>
<b>6.1</b>	<b>Use, Transmission, and Receipt of Information and Data – General .....</b>	<b>16</b>
<b>6.2</b>	<b>Disclosing Participants and Participant Uses of the Mass HIway.....</b>	<b>16</b>
<b>6.3</b>	<b>Direct Messaging.....</b>	<b>17</b>
6.3.1	Direct Standard .....	17
6.3.2	Direct Messaging - Mass HIway.....	17
6.3.3	Direct Messaging - HIway Trusted HISPs and Trust Framework Aggregators .....	17
6.3.4	Permitted Users.....	17
6.3.5	Permitted and Prohibited Uses.....	18
<b>6.4</b>	<b>Provider Directory .....</b>	<b>18</b>
6.4.1	Data Elements Collected for Provider Directory .....	18
6.4.2	Participant and Authorized Personnel Addressing .....	19
6.4.3	Provider Directory Data Upload .....	19
6.4.4	Provider Directory Data Currency and Update.....	19
6.4.5	Permitted Use of the Provider Directory .....	19
6.4.6	Exchange of Provider Directories with HIway Trusted HISPs .....	20
<b>6.5</b>	<b>Webmail.....</b>	<b>20</b>
<b>6.6</b>	<b>HIway-Sponsored Services.....</b>	<b>20</b>
<b>7.</b>	<b>Access Control.....</b>	<b>20</b>
<b>7.1</b>	<b>Direct Messaging – General .....</b>	<b>20</b>
<b>7.2</b>	<b>Direct Messaging – Access Control by the Mass HIway .....</b>	<b>20</b>
7.2.1	Participant Access .....	21
7.2.2	Authorized Personnel Access – Authority Delegated to Participant .....	21
<b>7.3</b>	<b>Delegated Authority – Access Control by Participants .....</b>	<b>21</b>
7.3.1	Access Administrator Responsibilities .....	21
7.3.2	Designation of Multiple Access Administrators.....	22
7.3.3	Termination of Access Administrator.....	22
7.3.4	Replacement of Access Administrator.....	22
7.3.5	Identification of Authorized Personnel .....	23

7.3.6	Assignment of Usernames and Passwords.....	23
7.3.7	Authorized Personnel Training and Compliance with Policies & Procedures .....	23
7.3.8	Termination of Authorized Personnel.....	23
<b>7.4</b>	<b>Direct Messaging – Access Control by .....</b>	<b>23</b>
<b>HIway Trusted HISP .....</b>		<b>23</b>
7.4.1	Authorized Personnel Access – Responsibility of HIway Trusted HISP .....	23
<b>7.5</b>	<b>Provider Directory Access.....</b>	<b>24</b>
<b>7.6</b>	<b>HIway-Sponsored Services - Access Control.....</b>	<b>24</b>
<b>8.</b>	<b>Patient Authorizations and Opt-in/Opt-out Mechanisms.....</b>	<b>24</b>
<b>8.1</b>	<b>Required Patient Authorizations.....</b>	<b>24</b>
<b>8.2</b>	<b>Direct Messaging - Optional Opt-in and/or Opt-out .....</b>	<b>24</b>
<b>8.3</b>	<b>HIway-Sponsored Services.....</b>	<b>24</b>
8.3.1	Opt-in mechanism.....	24
8.3.2	Centralized Opt-out mechanism .....	25
8.3.3	Local Opt-in/Opt-out mechanism .....	25
8.3.4	Changes to Opt-in/Opt-out status.....	25
<b>9.</b>	<b>Individual Access and Correction .....</b>	<b>26</b>
<b>9.1</b>	<b>Direct Messaging.....</b>	<b>26</b>
9.1.1	Individual Access.....	26
9.1.2	Individual Correction.....	26
<b>9.2</b>	<b>HIway-Sponsored Services.....</b>	<b>26</b>
<b>10.</b>	<b>Transaction Logs.....</b>	<b>26</b>
<b>10.1</b>	<b>Direct Messaging.....</b>	<b>26</b>
10.1.1	Transaction logs Maintained by the Mass HIway.....	26
<b>10.2</b>	<b>Transaction Log – HIway-Sponsored Services .....</b>	<b>27</b>
<b>11.</b>	<b>Data Quality and Integrity .....</b>	<b>27</b>
<b>11.1</b>	<b>Direct Standard.....</b>	<b>27</b>
<b>11.2</b>	<b>Direct Messaging.....</b>	<b>27</b>
<b>11.3</b>	<b>HIway-Sponsored Services.....</b>	<b>28</b>
<b>12.</b>	<b>Safeguards .....</b>	<b>28</b>
<b>12.1</b>	<b>Compliance with Privacy Laws .....</b>	<b>28</b>
<b>12.2</b>	<b>Safeguards – General.....</b>	<b>28</b>
12.2.1	Duty to Report.....	28
12.2.2	Tampering with Safeguards Prohibited .....	28
12.2.3	Non-disclosure of Security Information .....	28
12.2.4	Physical Security.....	28
12.2.5	Network Security .....	29
<b>12.3</b>	<b>Direct Messaging.....</b>	<b>29</b>

12.3.1	Participant Audit Trail .....	29
12.3.2	Direct Messaging - HIway Safeguards .....	29
<b>12.3</b>	<b>LAND Safeguards .....</b>	<b>30</b>
<b>12.4</b>	<b>Webmail Safeguards.....</b>	<b>30</b>
12.4.1	Access to Webmail .....	30
12.4.2	Security Procedures .....	30
12.4.3	Webmail Capacity.....	30
12.4.4	Webmail Supported Browsers .....	30
12.4.5	Workforce and Permitted Users.....	31
12.4.6	Suspension of Account .....	31
12.4.7	Tampering with Safeguards Prohibited .....	31
12.4.8	Participant Safeguards .....	31
<b>12.4</b>	<b>HIway-Sponsored Services.....</b>	<b>31</b>
<b>13.</b>	<b>Breach Response .....</b>	<b>31</b>
<b>13.1</b>	<b>Applicability of HIPAA “Breach” Definition.....</b>	<b>31</b>
<b>13.2</b>	<b>Direct Messaging.....</b>	<b>31</b>
<b>13.3</b>	<b>HIway-Sponsored Services.....</b>	<b>32</b>
<b>14.</b>	<b>Participation Fees.....</b>	<b>32</b>
<b>14.1</b>	<b>Direct Messaging.....</b>	<b>32</b>
14.1.1	Pricing Considerations .....	32
14.1.2	Rates.....	34
14.1.3	Pricing Categories Definitions.....	35
14.1.4	Fees and Invoicing .....	37
<b>14.2</b>	<b>HIway-Sponsored Services.....</b>	<b>37</b>
<b>15.</b>	<b>Contact the Mass HIway – Required Notifications .....</b>	<b>38</b>
<b>Appendix A-</b>	<b>Mass HIway Participant Agreement .....</b>	<b>39</b>
<b>and Business Associate Agreement.....</b>		<b>39</b>

# 1. Policies & Procedures Update Summary

---

The Mass HIway Policies & Procedures (“Policies & Procedures”) version 4 has undergone an update in 2017 in order to:

- Update and clarify the process for providers to submit annual Attestation Forms to comply with the [Mass HIway Regulations \(Section 5\)](#). For more information about the Mass HIway Regulations, review the [Summary](#) and [FAQs](#).
- Add provider organizations (Accountable Care Organization, Community Partner, and Community Service Agency) to the existing rate card and provider category definitions ([Section 14](#)).

## 2. Introduction and Definitions

---

### 2.1 Introduction to the Mass HIway Policies & Procedures

The Mass HIway Policies & Procedures is a common set of rules that govern access to and use of the Mass HIway.

The mission of the Mass HIway is to enable health information exchange by all providers in the Commonwealth regardless of affiliation, location, or differences in technology. The Mass HIway provides health information exchange services to a variety of providers in settings ranging from individual practices to large hospitals covering primary, ambulatory, acute, long-term, post-acute, behavioral health, home health and other facilities that offer healthcare services to residents statewide.

The Mass HIway has been, and will continue to be, designed through an open and inclusive planning and decision-making process. M.G.L. Chapter 118I designated a multi-stakeholder Health Information Technology Council (HIT Council) which provides input and advice regarding the Mass HIway directly to the EOHHS Secretary. In addition, the HIT Council is informed by multi-stakeholder Advisory Groups that bring Consumer/Patient and Healthcare Provider perspectives to the planning process as well as technical and legal expertise.

Information about Mass HIway activities is publicly posted on the Mass HIway website at [www.masshiway.net](http://www.masshiway.net) including these Policies & Procedures and all public meeting presentations and notes.

### 2.2 Mass HIway Users and Access Providers - Definitions

Consistent with the Mass HIway Regulations, the following definitions are used throughout the Policies & Procedures to differentiate the different types of organizations that access and use the Mass HIway:

#### 2.2.1 Mass HIway User (“User”)

“User”. Any organization, including its Authorized Personnel, that accesses and uses the Mass HIway for Direct Messaging and/or Highway-Sponsored Services. The term Mass HIway User includes “HIway Participants” and “Non-Participant Users.”

## **2.2.2 HIway Participant (“Participant”)**

“Participant”. A Mass HIway User that is a provider organization, a health plan, or a business associate of either a provider organization or health plan or other entity approved by EOHHS, and which executes a Participation Agreement.

- (a) All HIway Participants must sign a Participation Agreement and agree to the terms of the Mass HIway Policies & Procedures.
- (b) A HIway Participant may connect to the Mass HIway with the help of a Mass HIway Integrator.
- (c) A HIway Participant is issued a domain and direct addresses by the Mass HIway or by a HIway Trusted HISP.
- (d) A HIway Participant and its Authorized Personnel may be listed in the Mass HIway statewide Provider Directory.
- (e) A Mass HIway User must become a HIway Participant to be able to connect directly to the Mass HIway and use the Mass HIway as its HISP.
- (f) HIway-Sponsored Services are restricted to HIway Participants, regardless of whether the HIway Participant connects directly to the Mass HIway or via a HIway Trusted HISP.

## **2.2.3 Non-Participant User (“Non-Participant User”)**

“Non-Participant User”. A Mass HIway User that is an organization granted access to the Mass HIway through a HIway Trusted HISP.

- (a) A Non-Participant User must sign a Business Associate Agreement and/or other agreement with a HIway Trusted HISP, as required by the Highway Trusted HISP to fulfill its obligations under its HISP Agreement with the Mass HIway.
- (b) A Non-Participant User is issued a domain and direct addresses by the HIway Trusted HISP.
- (c) A Non-Participant User is able to send messages to and receive messages from HIway Participants via the HIway Trusted HISP and the Mass HIway.
- (d) The Mass HIway does not perform message transformation on messages received from Non-Participant Users.
- (e) Non-Participant Users do not have access to HIway-Sponsored Services.
- (f) Non-Participant Users are subject to the Mass HIway Policies & Procedures.

## **2.2.4 HIway Trusted Health Information Service Provider (“HIway Trusted HISP”)**

“HIway Trusted HISP”. A HISP with which the Mass HIway has a direct contractual arrangement, or a HISP that belongs to a third-party organization that acts as a Trust Framework aggregator with which the Mass HIway has a direct contractual arrangement, to securely exchange Direct Messages, through a means typically referred to as a HISP-to-HISP connection.

- (a) To become a HIway Trusted HISP, a HISP must execute a HISP Agreement with the Mass HIway or must execute a written contract with a third-party organization that

acts as a Trust Framework aggregator with which the Mass HIway also has a direct contractual arrangement.

(b) A HIway Trusted HISP must process HIway Direct Messages between its Non-Participant Users and HIway Participants in accordance with its contractual agreements.

- A HIway Trusted HISP authenticates its Users (i.e., verifies User identities).
- A HIway Trusted HISP issues and maintains Direct addresses.
- A HIway Trusted HISP issues and manages security keys.
- A HIway Trusted HISP facilitates Direct Messaging for its Users.

### **2.2.5 Mass HIway Integrator (“Integrator”)**

“Integrator”. An organization that connects Mass HIway Participants to the Mass HIway. Integrators are Business Associates of Participants, and may include, but are not limited to, electronic health record (EHR) vendors, technical integrators, and regional health information organizations (RHIOs). Integrators use Mass HIway for HISP services.

### **2.2.6 Access Administrator (“Access Administrator”)**

“Access Administrator(s)”. Staff person(s) designated by the Participant, with specific authority delegated by the Mass HIway to grant and administer access to the Mass HIway to the Participant’s Authorized Personnel.

### **2.2.7 Authorized Personnel (“Authorized Personnel”)**

“Authorized Personnel”. Staff persons of a User who have been granted access to the Mass HIway.

## **2.3 Mass HIway Agreement Types - Definitions**

### **2.3.1 Participation Agreement (“Participation Agreement”)**

“Participation Agreement”. A written, contractual agreement that defines the terms of access to the Mass HIway, and which must be executed by a Participant prior to accessing the Mass HIway. The Participation Agreement is included in these Policies & Procedures as Appendix A.

### **2.3.2 Business Associate Agreement (“Business Associate Agreement”)**

“Business Associate Agreement”. A written, contractual agreement between a “covered entity” and a “business associate,” as those terms are defined by the Health Insurance Portability and Accountability (HIPAA) Rules (45 CFR Parts 160 and 164) that meets the requirements of 45 CFR sec. 164.502(e). The Business Associate Agreement to be executed between EOHHS and Mass HIway Participants is included in these Policies & Procedures as an attachment to the Participation Agreement (Appendix A).

### **2.3.3 HISP Agreement (“HISP Agreement”)**

“HISP Agreement”. A written, contractual agreement that defines the terms of access to the Mass HIway for a HIway Trusted HISP and its Users. HIway Trusted HISPs, either (a) execute a bilateral HISP Agreement with EOHHS or (b) a HIway Trusted HISP belongs to a third party organization that acts as a Trust Framework aggregator (e.g., Direct Trust) with whom EOHHS executes a HISP Agreement.

### **2.3.4 Integrator Agreement (“Integrator Agreement”)**

“Integrator Agreement”. A written, contractual agreement that defines the terms of access to the Mass HIway for an Integrator. Integrators must execute an Integrator Agreement prior to accessing the Mass HIway.

## **2.4 Other Terms Used In Policies & Procedures - Definitions**

### **2.4.1 HIPAA Privacy and Security Rules (“HIPAA Privacy and Security Rules”)**

“HIPAA Privacy and Security Rules”. The standards of Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information set forth in 45 CFR Parts 160 and 164.

### **2.4.2 HIway Provider Directory or Provider Directory or PD (“HIway Provider Directory” or “Provider Directory” or “PD”)**

“HIway Provider Directory” or “Provider Directory” or “PD”. A statewide listing of Direct Addresses for Participants and their Authorized Personnel that is accessed for selection of message destination.

### **2.4.3 Individual Patient (“Individual” or “Patient”)**

“Individual” or “Patient”. A patient that receives healthcare services from a healthcare provider.

## **3. Authority, Scope, and Application**

---

### **3.1 Authority**

These Policies & Procedures are being adopted pursuant to the authority set forth in the Mass HIway Regulations (101 CMR 20.00).

### **3.2 Amendment**

The Mass HIway may amend these Policies & Procedures from time to time. The Mass HIway will provide notice of changes by email to the Participants’ designated Access Administrators and by posting changes to the Mass HIway website ([www.masshiway.net](http://www.masshiway.net)) in a manner and form that highlights any changes and makes them readily available for review. The Mass HIway will post any such amendments

on the Mass HIway websites at least thirty days before implementation of the amendment. However, the Mass HIway reserves the right to provide less notice, including no prior notice. It is the responsibility of each HIway User to check the Mass HIway websites periodically for such updates. User's continued use of the Mass HIway shall constitute acknowledgement and acceptance of the changes.

### **3.3 Scope and Application**

Except where more specific applicability is noted, the Mass HIway Policies & Procedures apply generally to all HIway Users. The purpose of these Policies & Procedures is to provide clear direction so that Mass HIway Users understand the rules that govern use of the Mass HIway.

### **3.4 Acceptance of Terms**

Access to and use of the Mass HIway by HIway Users constitutes acknowledgement and acceptance of, and agreement to abide by all the requirements in these Policies & Procedures.

### **3.5 Audits to Verify Proper Use of Mass HIway**

The Mass HIway (or a third party engaged by the Mass HIway) may audit Participants and Integrators to confirm compliance with, and proper use of, the Mass HIway in accordance with the Participation Agreement and these Policies & Procedures.

Audits will take place during normal business hours and at mutually agreeable times and shall be limited to such records, personnel and other resources of the Participant as are necessary to determine proper use of the Mass HIway and compliance with the Participation Agreement and these Policies & Procedures.

### **3.6 Legal Identity of Participant**

Participant must provide the Mass HIway information regarding its legal identity, including the legal identity of its sub-organizations connecting to the Mass HIway. This information must be provided through the document titled "Mass HIway Legal Entity and Sub Organization File Sheet V1" available at [www.masshiway.net](http://www.masshiway.net) or by clicking [here](#).

Participant shall complete and email this document to the address identified in Section 15 of these Policies & Procedures prior to connecting to the Mass HIway.

### **3.7 Merger, Acquisition, or Divestiture of Participant**

Participant must notify the Mass HIway of cases of merger, acquisition, or divestiture of a legal entity with another organization where such reorganization materially affects the Participant's use of the Mass HIway (e.g., Re-assignment of Access Administrator, Re-issuance of Direct addresses). Notification shall be provided by email, if feasible, and otherwise shall be provided by postal mail, sent to the address identified in Section 15 of these Policies & Procedures.

### **3.8 Defining and Describing Participants**

Participant is responsible for identifying its legal name and other names that it is known as or doing business as. During the Mass HIway onboarding process, these names and associated addresses will be collected, as well as sub-organizations of the Participant to be covered by the Participation Agreement. Participant shall notify the Mass HIway of any changes to the information provided under this Section 3.7 by email, sent to the address identified in Section 15 of these Policies & Procedures.

## 4. Description of Services

---

### 4.1 Direct Messaging

Mass HIway serves as a Health Information Services Provider (HISP), providing Direct Messaging (“Direct Messaging”) services that enable private and secure transmission of health information from one User to another, both within the Mass HIway and with Users that are members of HIway Trusted HISPs. Direct Messaging services include:

#### 4.1.1 Technical Assessment & Connectivity Recommendation

Mass HIway helps Participants assess their current technology and to determine the best option for connecting to the Mass HIway for Direct Messaging.

#### 4.1.2 Participant Authentication

Mass HIway verifies the identities of Participants. This is one of the pre-requisites for trusted exchange of information among HIway Users.

#### 4.1.3 Certificate Authority

Mass HIway issues and updates security certificates and encryption keys. These are the specific tools that:

- Encrypt and decrypt messages for private and secure transmission of messages
- Attest to the authenticated identity of an organization
- Detect message tampering and ensure message integrity
- Prove message origin for nonrepudiation

#### 4.1.4 Connection to Mass HIway for Direct Messaging

Mass HIway installs, sets up, tests, activates, and maintains connection to the Mass HIway for Direct Messaging in coordination with a Participant’s technology vendors. Connectivity options include:

##### *Direct XDR connection*

Where a Participant’s EHR or other health information system(s) is capable of a web services connection, the Participant may choose to connect directly to the Mass HIway.

##### *Local Access for Network Distribution (LAND) appliance connection*

Where a Participant’s health information system(s) is not capable of a Direct connection, or other circumstances exist that make a LAND appliance connection preferable, the Participant may choose to connect to the Mass HIway through a LAND appliance.

### ***Webmail connection***

Where a Participant's health information system(s) are not capable of a Direct connection, the Participant may also choose to connect to the Mass HIway through a web-based secure mail application.

More information about the specific terms and conditions that apply to each connectivity option is included in the Participation Agreement (Appendix A).

## **4.1.5 Connection to Other Health Information Exchanges**

Mass HIway connects Participants to other in- and out-of-state health information exchanges, as HIway Users, consistent with these Policies & Procedures.

## **4.1.6 Direct Address Authority**

Mass HIway issues and updates Direct addresses to Participants and their Authorized Personnel.

## **4.1.7 Provider Directory**

Mass HIway publishes and maintains a statewide electronic Provider Directory of Mass HIway Participants and their Authorized Personnel.

## **4.1.8 Message Transformation**

Where a sender and receiver utilize different message formats (e.g., S/MIME, XDR) Mass HIway transforms messages to the format of the data recipient. The Mass HIway does not perform Message Transformation on messages received from Non-Participant Users or Participants connecting through a HIway Trusted HISP at this time.

## **4.1.9 Training, Education, and Documentation**

Mass HIway will provide train-the-trainer and self-directed training tools and documentation as needed to educate Users and their Authorized Personnel on how to use the Mass HIway in compliance with these Policies & Procedures.

## **4.1.10 Technical Support**

Mass HIway provides production and maintenance support to Participants. Note that Participants provide the first line of user support to their Authorized Personnel and may escalate issues and questions to the Mass HIway support team.

## **4.1.11 Reports**

Mass HIway provides transaction log reports upon request to support Users' Accounting of Disclosure requests and breach investigations.

## **4.2 HIway-Sponsored Services**

In addition to Direct Messaging, Mass HIway may provide services for Participants that may use, analyze and/or share protected health information (PHI) and/or personally identifiable information (PII) on behalf of Participants, for example for statewide location of Patient information and event notification ("HIway-

Sponsored Services”). While there are no current HIway-Sponsored Services in production, HIway-Sponsored Services has been used to refer to the following:

#### **4.2.1 Relationship Listing Service or RLS**

The Relationship Listing Service (RLS) was a pilot of a searchable database that displayed a list of Participants that had a published relationship with a patient. The RLS was populated by Participants who transmit patient demographic information to the HIway. Upon conclusion of the pilot, the Mass HIway and pilot Participants reviewed lessons learned to be applied in future HIway-Sponsored Services.

#### **4.2.2 Event Notification Service**

Mass HIway anticipates adding an Event Notification Service (ENS) to its service offering. Detailed information regarding the ENS will be added to the Policies & Procedures once the ENS is ready for launch.

## **5. HIway Connection Submissions Requirements**

---

### **5.1 Implementation of HIway Direct Messaging**

Under Section 20.10 of the HIway Regulations, provider organizations must establish interoperability by implementing HIway Direct Messaging. Provider organizations may implement HIway Direct Messaging through the following methods:

- Direct EHR Connection
- LAND
- Webmail
- Via a HIway Trusted HISP
- Any other method approved by the Mass HIway

### **5.2 Reporting Implementation of HIway Direct Messaging**

Provider organizations that have required dates for connecting to the Mass HIway must annually submit information regarding: 1) whether or not they have an EHR; 2) how their EHR, if any, connects to the Mass HIway; and 3) information regarding their use of the Mass HIway in order to comply with the annual connection requirement.

Information regarding each provider organization’s compliance with the annual connection requirement shall be submitted on the Attestation Form that corresponds with their attestation year outlined below, in Section 5.3 of these Policies & Procedures. Attestation forms can be found at [www.masshiway.net](http://www.masshiway.net), or by emailing [MassHIwayAttestation@state.ma.us](mailto:MassHIwayAttestation@state.ma.us).

Attestation forms are due by July 1<sup>st</sup> following each Provider Organization’s first required Mass HIway connection date (per Schedule A of 101 CMR 20.09).

## 5.3 Annual Requirements for Use of the Mass HIway

Annual requirements for minimal use of the Mass HIway are as follows. Categories of use cases and use case examples are provided below, in Section 5.4 of these Policies & Procedures. Provider organizations are required to coordinate with entity (or entities) participating in the transmission of the Direct Message in order to establish that the other entity is receiving and able to use the transmission.

- **Year 1:** The provider organization shall send or receive HIway Direct Messages for at least one use case. The use case may be within any category of use cases.
- **Year 2:** The provider organization shall send or receive HIway Direct Messages for at least one use case that is within the provider-to-provider communications category of use cases.
- **Year 3:** The provider organization shall send HIway Direct Messages for at least one use case that is within the provider-to-provider communications category of use cases. The provider organization shall also receive HIway Direct Messages for at least one use case that is within the provider-to-provider communications category of use cases. One of these two use cases may be the use case that was used to meet the Year 2 requirement.

Information regarding each provider organization's compliance with the annual requirement to report use of the HIway shall be submitted on the Attestation Form that corresponds with their attestation year outlined above. Attestation forms can be found at [www.masshiway.net](http://www.masshiway.net), or by emailing [MassHIwayAttestation@state.ma.us](mailto:MassHIwayAttestation@state.ma.us).

## 5.4 Use Cases and Examples

The Mass HIway has been used for several years to support secure inter-organizational communication and information sharing. The following provides examples of typical categories of use cases for the Mass HIway, though this is not an exhaustive list of potential use cases:

- **Provider-to Provider-Communications:** The Mass HIway supports information hand-offs from one care team to another including:
  - Discharge Summary sent from a hospital to next setting of care at time of Patient discharge
  - Summary of Care sent from a Primary Care Provider to a consulting Specialist at time of a Patient referral
  - Consult Note sent from consulting Specialist back to Primary Care Provider at completion of Specialist visit
  - Behavioral health screening (e.g., Depression screen, Anxiety screen, Substance Use screen) sent from Primary Care Provider to a Community Mental Health Center
- **Public Health Reporting:** The Mass HIway supports reporting to the Department of Public Health for a range of required reporting programs including:
  - Immunization information sent from Pediatric Primary Care Provider to the Massachusetts Immunization Information System (MIIS) at DPH
  - Cancer diagnosis information sent to the Massachusetts Cancer Registry
  - Bio-surveillance information sent from Massachusetts Hospitals to the Syndromic Surveillance system at DPH

- Mandatory lab information sent from labs to the Electronic Lab Reporting (ELR) system at DPH
- **Quality Reporting:** The Mass HIway supports secure information sharing among Participants for purposes of conducting clinical quality improvement and reporting programs including:
  - CCDA documents sent from Healthcare Organizations to a Quality Data Center for measures calculation, feedback, and reporting
- **Payer Case Management:** The Mass HIway supports secure information sharing among healthcare providers, payers, and case managers for purposes of case management including:
  - Summary of Care sent from Primary Care Provider to a Case Manager for intensive case management support
  - Summary of Care sent from Provider to Payer to support chart review

Additional resources for developing effective use cases for the Mass HIway, including the Massachusetts eHealth Institute use case toolkit, are available at [www.masshiway.net](http://www.masshiway.net) or by clicking [here](#).

## **6. Data Collection, Use, and Disclosure**

---

### **6.1 Use, Transmission, and Receipt of Information and Data – General**

Information and data (“Information”) sent via the Mass HIway, consistent with information sent by other methods, is subject to subsequent use and disclosure by the recipient. Only Users and their Authorized Personnel may transmit or receive Information via the Mass HIway. HIway Users are responsible for the following:

- (a) If User receives information in error, the User must destroy such Information.
- (b) Users are responsible for the security and privacy of content downloaded or transmitted via the Mass HIway.
- (c) Users are responsible for selecting and addressing the intended recipient(s) of all Information they send over the Mass HIway.
- (d) Users are responsible for determining which of their current information trading partners are connected to the Mass HIway, and coordinating with those Users to determine which types of messages that organization is ready to receive before sending a message or document over the Mass HIway.

### **6.2 Disclosing Participants and Participant Uses of the Mass HIway**

The Mass HIway may publicly disclose a list of Participants through its website, marketing materials, and HIT Council meeting presentations.

The Mass HIway may publicly disclose overall transaction volume and transaction volume by Participant type (e.g., Provider, Payer, Public Health Agency).

The Mass HIway will not publicly disclose transaction volume by Participant, unless approved by the Participant, or as required by law.

The Mass HIway allows Users to search the Provider Directory and may provide extracts of the Provider Directory to Users for permitted uses.

## **6.3 Direct Messaging**

### **6.3.1 Direct Standard**

Direct Messaging facilitates private and secure directed exchange of health information among Users. Direct Messaging is provided by the Mass HIway and HIway Trusted HISPs according to the nationally recognized Direct Standard. The Direct Standard was created as a means to send encrypted health information among authenticated senders and receivers securely over the Internet.

By design, the Direct Standard limits opportunities for collection, use, and disclosure of personal health information (PHI). The Mass HIway and the HIway Trusted HISPs that offer Direct Messaging Services facilitate addressing and secure exchange of closed (encrypted) packages of information among known organizations. To perform these services, the Mass HIway and HIway Trusted HISPs require information about the provider organizations that are sending and receiving Direct Messages but do not have any role in analyzing, using, or sharing the actual contents of the closed messages. Responsibilities for data collection, use, and disclosure remain with the healthcare organizations that are sending and receiving Direct Messages.

### **6.3.2 Direct Messaging - Mass HIway**

The Mass HIway does not analyze, use, or share the contents of messages sent over the Mass HIway. As such, it is unable to provide information with regards to which Participants are able to receive any particular type of message or document.

### **6.3.3 Direct Messaging - HIway Trusted HISPs and Trust Framework Aggregators**

Like the Mass HIway, HIway Trusted HISPs also facilitate private and secure directed exchange of health information among Users. EOHHS determines which HISPs may be trusted to interconnect with the Mass HIway. This determination is conducted through vetting of HISPs directly and via Trust Framework aggregators such as DirectTrust. EOHHS enters into contractual agreements with HISPs and Trust Framework aggregators to formalize mutual agreement to the core requirements of Direct.

### **6.3.4 Permitted Users**

The permitted users of Direct Messaging are: Participants, including licensed healthcare providers and provider organizations, Medicaid managed care entities, accountable care organizations, licensed health insurers, government agencies that transmit or receive health information (e.g., Department of Public Health), Business Associates serving Massachusetts residents, Non-Participant Users accessing the Mass HIway through a HIway Trusted HISP and other entities as approved by EOHHS.

The Mass HIway maintains sole discretion to allow, deny, or suspend participation or use for any organization or individual.

### **6.3.5 Permitted and Prohibited Uses**

Permitted uses of Direct Messaging are those disclosures permitted under the HIPAA Privacy Rule.

Prohibited uses of Direct Messaging include the following:

- For illegal purposes or to further illegal activities including, without limitation, any upload, download, posting, distribution or facilitating the distribution of any material that constitutes unauthorized use or reproduction of material protected by copyright, trademark, trade secret or other intellectual property right.
- For any purpose or activity that is, or may be perceived as, obscene, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, or invasive of another's privacy.
- For any unauthorized access to or inappropriate use of data, systems, and networks including, but not limited to, any probe or attempted probe, scan or vulnerability testing without the express authorization of the Mass HIway.
- To interfere with the service of any user, host or network, including deliberate attempts to overload a server, network connected device, or network component;
- To propagate malformed data or network traffic resulting in damage to, or disruption of, a service or network connected device;
- To forge data with the intent to misrepresent the origination user or source;
- To send unsolicited, mass electronic mail messages to one or more recipients or systems, including, without limitation, commercial advertising and informational announcements;
- To forge electronic mail headers (including any portion of the IP packet header and/or electronic mail address) or to use any other method to forge, disguise, or conceal the user's identity or IP address; and
- Any use that is not a Permitted Use.

## **6.4 Provider Directory**

### **6.4.1 Data Elements Collected for Provider Directory**

Mass HIway collects and uses data elements of Participants and their Authorized Personnel for operation of the Mass HIway Provider Directory. "Required data elements" are those minimally necessary to operate the Provider Directory. Required data elements will be collected, as needed, by the Mass HIway.

"Optional data elements" are those which are not required to operate the Provider Directory, but which, if provided, may facilitate discovery of Participant addresses. Optional data elements are found in the Participant address collection spreadsheet. Optional data elements may be provided at the discretion of each Participant. The current Participant address collection spreadsheet is available at [www.masshiway.net](http://www.masshiway.net) or by clicking [here](#).

All collected data, including required and optional data elements, may be made available for display in the Provider Directory, so no sensitive data should be supplied.

Participants must provide required data elements initially, and may provide optional data elements at a later date.

## **6.4.2 Participant and Authorized Personnel Addressing**

A standard Mass HIway Direct address is made up of 2 parts: a local name and a domain. Each domain must be aligned with only one legal entity identified in a Participation Agreement. A Participant may have multiple local names.

During the onboarding process, a Participant's Access Administrator requests the local name portion of the address and has full discretion in name selection. Mass HIway issues domains with mutual goals of maintaining addresses that are transparent and obvious to Users, avoiding duplicates, and ensuring standardization. Participant addresses must conform to the DIRECT protocol.

## **6.4.3 Provider Directory Data Upload**

The Participant's Access Administrator is responsible for submitting the Mass HIway addresses for the Provider Directory using the Mass HIway Provider Directory Provider Upload File Format spreadsheet.csv file for bulk upload until a self-service option is available for upload by the Participants' Access Administrator.

## **6.4.4 Provider Directory Data Currency and Update**

The Participant's Access Administrator is responsible for keeping its Participant and Authorized Personnel data current.

If Participant has the following changes in its Authorized Personnel, the Mass HIway must be notified immediately:

- Termination / Suspension
- Completion of assignment (e.g., Resident)
- Resignation
- Lost or suspended license

If Authorized Personnel have a role change, the Mass HIway should be notified as soon as reasonably practicable, but no later than quarterly.

For all other changes to Authorized Personnel, the Mass HIway may be notified quarterly.

The Mass HIway will revoke certificates, make all updates to the Provider Directory, and take action to synchronize any Provider Directory copies.

Mass HIway will keep a master Provider Directory up to date and will periodically make copies available to Participants. The Provider Directory is available for download by Participants upon request at [www.masshiway.net](http://www.masshiway.net) or by clicking [here](#).

Any notifications required by this subsection shall be provided by email, sent to the address identified in Section 15 of these Policies & Procedures.

## **6.4.5 Permitted Use of the Provider Directory**

The Mass HIway Provider Directory may be used only for purposes of exchanging information among Users, Integrators, Authorized Personnel, and HIway Trusted HISPs. Users, Integrators, Authorized Personnel, and HIway Trusted HISPs shall not publicly make available or sell the Mass HIway Provider Directory.

Participants shall use active Mass HIway addresses and verify that the intended recipient is ready to receive that message type over the Mass HIway. If the Participant is made aware that the intended recipient is not ready to receive that message type over the Mass HIway, the User shall find an alternative means to send the information

#### **6.4.6 Exchange of Provider Directories with HIway Trusted HISPs**

In order to facilitate information exchange among Users of the Mass HIway and Users of HIway Trusted HISPs, the Mass HIway conducts bi-lateral exchange of Provider Directories with HIway Trusted HISPs. The Mass HIway makes available to its Participants the addresses provided by HIway Trusted HISPs. The Mass HIway makes available to Mass HIway Trusted HISPs the addresses of its Participants.

The Mass HIway synchronizes Provider Directories with HIway Trusted HISPs periodically subject to the limitations of each HISP.

### **6.5 Webmail**

The Mass HIway administers webmail accounts on behalf of some Participants. As a Participant's Business Associate, the Mass HIway is governed by HIPAA in its role as administrator of Webmail accounts and only accesses information for purposes of providing technical support to the Participant, or as otherwise agreed to in the Business Associate Agreement.

### **6.6 HIway-Sponsored Services**

Currently, there are no HIway-Sponsored Services. This Section will be updated prior to release of new HIway-Sponsored Services including the anticipated Event Notification Service.

## **7. Access Control**

---

### **7.1 Direct Messaging – General**

The Mass HIway and HIway Trusted HISPs grant access to Direct Messaging only to Users that have been authenticated (identity verified) and that are permitted users of the Mass HIway or a HIway Trusted HISP. The Mass HIway and HIway Trusted HISPs enforce access control through issuance, management, and revocation of User security certificates for Direct Messaging.

### **7.2 Direct Messaging – Access Control by the Mass HIway**

The Mass HIway controls access to the Mass HIway through two Access Control models: 1) the Mass HIway controls access to **connect** to the Mass HIway; and 2) the Mass HIway controls access to **use** the Mass HIway.

The Mass HIway controls organizational access to connect to the Mass HIway for all Participants, Integrators, and HIway Trusted HISPs through the execution of Participation Agreements, Technical Integrator Access Agreements, and HISP Agreements, respectively.

The Mass HIway delegates the authority and responsibility to control individual access to use the Mass HIway to Participants and HIway Trusted HISPs.

### **7.2.1 Participant Access**

The Mass HIway authorizes Participants to connect to the Mass HIway through execution of the Mass HIway Participation Agreement.

The Mass HIway may at any time suspend access to the Mass HIway by the Participant, Access Administrator and/or any of its Authorized Personnel as required to prevent unauthorized use of the Mass HIway; to prevent, investigate, or remedy a breach or security incident; to protect the integrity of the information systems operated by the Mass HIway and its contractors; or for violation of any of the requirements of these Policies & Procedures. The Mass HIway may restore such access as determined by the Mass HIway in its sole discretion.

The Mass HIway enforces access control through issuance, management, and revocation of Participant security certificates for Direct Messaging. In addition, the Mass HIway enforces access control through issuance, management, and revocation of Authorized Personnel credentials for Webmail services.

### **7.2.2 Authorized Personnel Access – Authority Delegated to Participant**

The Mass HIway formally delegates the authority and responsibility to control individual access to the Mass HIway to each Participant, to be effectuated through its designated Access Administrator. Participants are accountable for the privacy, security, and legal disclosure of their patient information as defined by HIPAA including the physical, technical, and administrative access controls for the systems that interface with the Mass HIway.

## **7.3 Delegated Authority – Access Control by Participants**

Participants shall be directly liable for ensuring that its organization, including its authorized personnel, complies with these Policies & Procedures. Participants shall designate an Access Administrator to act as the Participant's authorized representative, and to serve as the Participant's point-of-contact with the Mass HIway. The Access Administrator must have express authority to act on behalf of the Participant in all administrative functions related to the Participant's access to and use of the Mass HIway, including the creation of accounts.

Access Administrators may be issued user credentials (username and password) for the purpose of accessing delegated administrative functions, including the creation of Mass HIway accounts on behalf of the Participant. Access Administrators must keep user credentials confidential and not knowingly share them with anyone else, including co-workers, to use for any reason. The Access Administrator is responsible, on behalf of the Participant, for any unauthorized access gained as a result of negligence in failing to safeguard Access Administrator credentials. Access Administrator must immediately report to the Mass HIway any information that would lead a reasonable person to believe that someone else other than the Access Administrator had obtained access to Access Administrator credentials.

### **7.3.1 Access Administrator Responsibilities**

Participants shall ensure that Access Administrators implement the following responsibilities:

- (a) Access Administrators are responsible for being familiar with the Mass HIway Policies & Procedures, and monitoring their organization's compliance with the current Mass HIway Policies & Procedures.
- (b) Access Administrators verify and credential Authorized Personnel as members of the Participant organization and assess their need for access to the Mass HIway prior to creating an account and granting access rights.

- (c) Access Administrators require all Authorized Personnel to keep their user names and passwords private.
- (d) Access Administrators review the accounts of Participant's Authorized Personnel and update any account that needs to be updated, including with information related to the account's listing in the Provider Directory. This shall be done as often as necessary, but in no event less often than quarterly.
- (e) Access Administrators terminate access to the Mass HIway immediately for any Authorized Personnel who no longer requires access by reason of termination of employment.
- (f) Access Administrators terminate access to the Mass HIway as soon as reasonably practicable for any Authorized Personnel who no longer requires access by reason of change in employment function or other reason.
- (g) Access Administrators suspend access to the Mass HIway for any Authorized Personnel who have information that would lead a reasonable person to believe that their account may have been breached, and promptly notify the Mass HIway of the suspected breach. Notification shall be provided by email and phone, as provided in Section 15 of these Policies & Procedures.
- (h) Access Administrators train and educate Authorized Personnel on the permitted uses of the Mass HIway as described in the Policies & Procedures and as otherwise directed by the Mass HIway.
- (i) Access Administrators implement required notification to the Participant's patients of the Participant's use of HIway-Sponsored Services.
- (j) Access Administrators submit Provider Directory information to the Mass HIway and shall keep Provider Directory information current.

### **7.3.2 Designation of Multiple Access Administrators**

Each Participant shall designate at least one individual to serve as Access Administrator in connection with the creation, oversight, and termination of Participant's Authorized Personnel. The Mass HIway recommends designating a backup Access Administrator.

If a Participant deems that two Access Administrators are not sufficient to manage its Authorized Personnel, Participant may separately request that the Mass HIway credential additional Access Administrators; such request should contain a detailed rationale for why additional Access Administrators are necessary. The Mass HIway may allow Participants to designate additional Access Administrators at its sole discretion.

### **7.3.3 Termination of Access Administrator**

Each Participant is responsible for immediately disabling the identified individual's access to the Mass HIway when such individual can no longer perform the role of designated Access Administrator by reason of termination of employment or change in employment function.

### **7.3.4 Replacement of Access Administrator**

Each Participant is responsible for having at least one (1) Access Administrator at all times, and for designating replacement Access Administrators as necessary.

### **7.3.5 Identification of Authorized Personnel**

Each Participant's Access Administrator must provide the Mass HIway with an up-to-date list of the Participant's Authorized Personnel, and such other information about such Authorized Personnel as the Mass HIway may reasonably require. Each Participant's process for identifying Authorized Personnel must include verifying each individual's identity, the individual's affiliation with the Participant, the individual's functional role with the Participant, and whether it is within the individual's job duties for the individual to send or receive information using the Mass HIway.

### **7.3.6 Assignment of Usernames and Passwords**

Each Participant's Access Administrator shall provide Authorized Personnel with a user name and a password to access the Mass HIway. Authorized Personnel are prohibited from sharing their user names and/or passwords with others and from using the user names and/or passwords of others.

### **7.3.7 Authorized Personnel Training and Compliance with Policies & Procedures**

Each Participant's Access Administrator is responsible for training all of its Authorized Personnel and ensuring that they have read and understood the Mass HIway Policies & Procedures. Each Participant shall ensure that all of its Authorized Personnel comply with the Mass HIway Policies & Procedures and comply with Participant's own privacy and security Policies & Procedures.

### **7.3.8 Termination of Authorized Personnel**

Each Participant's Access Administrator shall terminate access to the Mass HIway immediately for any Authorized Personnel who no longer require access by reason of termination of employment, and as soon as reasonably practicable for Authorized Personnel who no longer require access by reason of change in function. Each Participant shall terminate access to the Mass HIway immediately for any Authorized Personnel that engages in conduct that could undermine the security and integrity of the Mass HIway. Each Participant shall notify the Mass HIway immediately upon termination of any Authorized Personnel accounts. Notification shall be provided by email, sent to the address identified in Section 15 of these Policies & Procedures.

## **7.4 Direct Messaging – Access Control by HIway Trusted HISP**

HIway Trusted HISPs control access of Non-Participant Users, as well as control access of their Authorized Personnel, in accordance with the provisions of their HISP Agreement with the Mass HIway.

### **7.4.1 Authorized Personnel Access – Responsibility of HIway Trusted HISP**

The HIway Trusted HISP is responsible for granting access to its users and Authorized Personnel. The HIway Trusted HISP executes its own legal agreements, sets and enforces its own Policies & Procedures, authenticates users and Authorized Personnel, issues and maintains Direct addresses and security certificates, and facilitates Direct Messaging.

The HIway Trusted HISP enforces access control through issuance, management, and revocation of user security certificates for the Direct Messaging services pursuant to its own Policies & Procedures.

## **7.5 Provider Directory Access**

Access to the Mass HIway Provider Directory is limited to Participants, Non Participant Users, Integrators, and HIway Trusted HISPs.

Mass HIway Provider Directory may be accessed through the Provider Portal, as a secure web service, or may be distributed by a .csv or other industry standard file for local upload or manual entry into a Participant's, Integrator's, or HIway Trusted HISP's systems. The Provider Directory may be used only to facilitate use of the Mass HIway for uses permitted by these Policies & Procedures.

## **7.6 HIway-Sponsored Services - Access Control**

Currently, there are no HIway-Sponsored Services. This section will be updated prior to release of new HIway-Sponsored Services including the anticipated Event Notification Service.

# **8. Patient Authorizations and Opt-in/Opt-out Mechanisms**

---

## **8.1 Required Patient Authorizations**

Users are responsible for obtaining any and all necessary patient authorizations relating to the use and disclosure of patient information, including without limitation patient authorization to release HIV test results, genetic test information, substance abuse treatment information, and as otherwise required by law.

Access to and use of the Mass HIway for Direct Messaging and HIway-Sponsored Services must comply with applicable federal and state privacy laws and implementing regulations.

## **8.2 Direct Messaging - Optional Opt-in and/or Opt-out**

Mass HIway Users may implement a local opt-in and/or opt-out process that applies to the use of HIway Direct Messaging by their organization, but are not required to do so.

## **8.3 HIway-Sponsored Services**

### **8.3.1 Opt-in mechanism**

Participants must provide patients and/or their legal representatives with written notice of how the Participant uses HIway-Sponsored Services.

- Written notice shall be provided by at least one of the following methods: (a) inclusion in the HIway Participant's privacy notice, (b) patient handout, (c) letter, email, or other personal electronic communication to patients.
- Notice must be provided in compliance with applicable state and federal requirements regarding language access for individuals with limited English proficiency. There are currently no HIway-Sponsored Services. This section will be updated prior to release of new HIway-Sponsored Services including the anticipated Event Notification Service.

- The written notice must describe the manner and means that the patient can opt-out of HIway-Sponsored Services.

A sample written notice that Provider Organizations may use to satisfy the notice requirement will be included in these Policies & Procedures upon the release of new HIway-Sponsored Services. The sample written notice may be adapted by Provider Organizations that choose to implement a supplemental, local opt-in/opt-out mechanism under Section 8.2.3.

### **8.3.2 Centralized Opt-out mechanism**

Currently, there are no HIway-Sponsored Services. As new HIway-Sponsored Services become available, including the Event Notification System, the Mass HIway or its designee will implement a centralized opt out system. The centralized opt-out mechanism will allow patients and/or their authorized designee to notify the Mass HIway or its designee directly if they choose to opt-out. At the request of a patient, a Provider Organization that has an established relationship with that patient must notify the Mass HIway that the patient has decided to opt-out and/or provide written instructions to its patients on how a patient or their authorized designee can notify the Mass HIway of the patient's choice to opt-out.

Form and format for administration of the centralized opt out system will be made available once HIway-Sponsored Services are implemented, and these Policies & Procedures will be updated at that time.

### **8.3.3 Local Opt-in/Opt-out mechanism**

In addition to the opt-in opt-out provisions described in Section 8.2.1 and Section 8.2.2, above, Provider Organizations may choose to implement their own local opt-in and/or opt-out process that applies to their use of HIway-sponsored Services, but are not required to do so. If a HIway Participant does implement a local process that applies to HIway-sponsored Services, it must supplement the opt-in opt-out provisions described in 101 CMR 20.07(2)(a) and 101 CMR 20.07(2)(b), and shall not replace these provisions. Any local opt-in/opt-out mechanism must at minimum provide written notice in compliance with Section 8.2.1 and an opportunity to opt-out in compliance with Section 8.2.2.

#### ***Right to review local opt-in/opt-out – HIway-Sponsored Services***

EOHHS reserves the right to review the local opt-in or local opt-out process being used by Provider Organizations.

#### ***Requirements for local opt-in/opt-out – HIway-Sponsored Services***

These Policies & Procedures will be updated to specify the requirements of this subsection upon implementation of the ENS.

### **8.3.4 Changes to Opt-in/Opt-out status**

Participants are required to allow Patients to change their opt-in or opt-out status for HIway-Sponsored Services and to inform Mass HIway of any such changes. The following situations require Participants to provide patients with an opt-out choice:

- Change in status of adolescent Patients to mature (age 18) or emancipated minors.

## **9. Individual Access and Correction**

---

### **9.1 Direct Messaging**

All HIway Users must comply with the HIPAA Security and Privacy Rules governing Individuals' rights to access and request changes or amendments to their medical records

#### **9.1.1 Individual Access**

Because the Mass HIway is not a medical record holder when providing Direct Messaging, an Individual should request a copy of his/her medical records directly from the healthcare provider that holds the record. The Mass HIway does not analyze, use, or share the contents of the message except as required to deliver it and to make it available for use by the intended recipient.

#### **9.1.2 Individual Correction**

Because the Mass HIway is not a medical record holder when providing Direct Messaging, an Individual should request a correction to his/her medical records directly from the healthcare provider that holds the record. The Mass HIway does not analyze, use, or share the contents of the message except as required to deliver it and to make it available for use by the intended recipient.

### **9.2 HIway-Sponsored Services**

Currently, there are no HIway-Sponsored Services. This section will be updated prior to release of new HIway-Sponsored Services including the anticipated Event Notification Service.

## **10. Transaction Logs**

---

### **10.1 Direct Messaging**

The Mass HIway maintains transaction logs of transmitted Direct Messages. Mass HIway transaction logs may be accessed by Participants to support audits, accounting of disclosure requests by Individuals, and breach investigations.

#### **10.1.1 Transaction logs Maintained by the Mass HIway**

Transaction logs maintained by the Mass HIway may be used for the following purposes:

- To support Participant audits, accounting of disclosure requests, and breach investigations
- To support Mass HIway reporting of operational usage

Transaction logs maintained by the Mass HIway may be accessed directly only by Mass HIway personnel, including EOHHS and vendor staff.

Transaction logs may be transmitted to a Mass HIway Participant Access Administrator upon request. Requesting Participant will be given a log containing only the messages in which Participant is the sender or receiver. Requests for transaction logs where Participant is neither the sender nor the receiver require permission from each Participant in the requested report.

Mass HIway will keep a transaction log of Direct Messages sent from and received by Participants for the purposes of audit, breach investigation, and responding to Patient accounting of disclosures requests.

Transaction log will contain the following data elements:

- A. Sender Direct address
- B. Receiver Direct address
- C. Date and time of transaction
- D. Optional message ID

The transaction log will not contain any patient information. Given that Mass HIway does not analyze, use, or share the contents of the message except as required to deliver it and to make it available for use by the intended recipient, Mass HIway does not identify the subject of the message nor anything about the subject.

Patients will be directed to Participants for requests for accounting of disclosures. Participants may request Transaction logs from the Mass HIway to support accounting of disclosures requests.

## **10.2 Transaction Log – HIway-Sponsored Services**

Currently, there are no HIway-Sponsored Services. This section will be updated prior to release of new HIway-Sponsored Services including the anticipated Event Notification Service.

## **11. Data Quality and Integrity**

---

### **11.1 Direct Standard**

Direct Messaging is designed to maintain data quality and integrity. The Direct Standard requires that message integrity is maintained from sender to receiver. Users maintain full control over their data at either end of a transaction. The Mass HIway and HIway Trusted HISPs transport copies of data from one User to another without modifying the data thus avoiding data discrepancies.

### **11.2 Direct Messaging**

The Mass HIway supports data quality and integrity through its technical design. Users maintain full control over their Patients' information.

Users are responsible for ensuring accuracy, completion, and currency of Patient information sent via the Mass HIway. The Mass HIway offers a secure method for Mass HIway Users to transmit a message with information about a patient to other users, where the Mass HIway does not analyze, use, or share the contents of the message except as required to deliver it and to make it available for use by the intended recipient.

The Mass HIway delivers messages from one Participant to another Participant where the Mass HIway is the HISP. This includes delivery to the Participant domain or to the Integrator designated by the Participant. Participants are responsible for intra-organizational routing, and routing between entities under an Integrator.

Where members of a HIway Trusted HISP utilize the Mass HIway, the Mass HIway will deliver messages to the HIway Trusted HISP. Delivery to the addressee under the HIway Trusted HISP is the responsibility

of that HISP. The Mass HIway does not perform Message Transformation on messages received from Non-Participant Users or Participants connecting through a Mass HIway Trusted HISP at this time.

The Mass HIway employs public key infrastructure to verify integrity of messages sent over the Mass HIway. If the Mass HIway is notified of a failed message delivery, that notification will be forwarded to the Participant attempting to send the message.

## **11.3 HIway-Sponsored Services**

Currently, there are no HIway-Sponsored Services. This section will be updated prior to release of new HIway-Sponsored Services including the anticipated Event Notification Service.

## **12. Safeguards**

---

### **12.1 Compliance with Privacy Laws**

HIway Users, Integrators, and HIway Trusted HISPs shall comply with all applicable laws governing the privacy and security of protected health information and personal information and data, including without limitation, the HIPAA Privacy and Security Rules, Chapter 93H of the Massachusetts General Laws, and Section 13402 of the Health Information Technology for Economic and Clinical Health (HITECH) Act, and their implementing regulations.

### **12.2 Safeguards – General**

#### **12.2.1 Duty to Report**

Users must immediately report any weaknesses in or breach of HIway system security and/or any incidents of possible misuse of the Mass HIway. Notification shall be provided by email and phone, as provided in Section 15 of these Policies & Procedures.

#### **12.2.2 Tampering with Safeguards Prohibited**

Users and their Authorized Personnel shall not attempt to disable, modify, or circumvent any security safeguards adopted by the Mass HIway or HIway Trusted HISPs. The Mass HIway may monitor, record, and audit use of the Mass HIway in order to protect the security of the Mass HIway.

#### **12.2.3 Non-disclosure of Security Information**

Users and their Authorized Personnel shall not divulge connectivity details, passwords, or other access control information that could be used by a third party to gain unauthorized access to the Mass HIway or HIway Trusted HISPs.

#### **12.2.4 Physical Security**

Users and their Authorized Personnel shall take reasonable precautions to secure their physical working environment to guard against unauthorized access including, but not limited to workstations, laptops or Mass HIway or HIway Trusted HISP issued software, certificates, private keys or network connected devices (e.g. LAND). In addition, the Users and their Authorized Personnel shall take security precautions in the workspace, such as the use of

password screen locks, session timeouts, logging out of workstations at the end of the working day and strong passwords.

### **12.2.5 Network Security**

Users must maintain a secure network through measures, such as multiple firewalls configured for high availability and minimal vulnerability and the latest versions of OS and antivirus protection.

## **12.3 Direct Messaging**

The Mass HIway and its Users, Integrators, and HIway Trusted HISPs shall implement safeguards that are reasonable and appropriate to ensure the security of personal health information sent via Direct Messaging. Such security procedures shall include administrative procedures, physical security measures, and technical security safeguards.

### **12.3.1 Participant Audit Trail**

Participants shall be responsible for maintaining audit trails and access logs as necessary for Participants to meet their obligations under any applicable state or federal law, including the HIPAA Privacy rule, to provide patients with any notice, report, or accounting regarding access to, or use or disclosure of, a patient's Protected Health Information or other personally identifiable information that Participants send via the Mass HIway.

### **12.3.2 Direct Messaging - HIway Safeguards**

The Mass HIway has put the following safeguards in place:

- The Mass HIway controls access to the Mass HIway by executing contractual agreements with HIway Users to clearly define rules for access.
- Mass HIway Users must maintain safeguards in compliance with the HIPAA Privacy and Security Rules and these Policies and Procedures.
- The Mass HIway authenticates and authorizes Participant organizations to connect to the Mass HIway. The Mass HIway delegates authority to Participants for individual user authentication and authorization. The Mass HIway facilitates exchange with HIway Trusted HISPs and requires HISPs to authenticate and authorize their users.
- The Mass HIway and HIway Trusted HISPs follow the nationally recognized Direct Standard for secure messaging of health information. The technology includes Public Key Infrastructure (PKI) and Certificate Authority (CA) which are used to achieve the following security objectives:
  - Confidentiality: Security keys encrypt and decrypt messages so they may be sent securely.
  - Authentication: Certificate Authority attests to the verified identity of a certificate holder.
  - Integrity: Recipient can identify tampering of a signed message and tampered messages fail.
  - Nonrepudiation: Message signed with private key proves the message origin

- The Mass HIway uses security keys to limit access to authenticated and authorized Participants and their Authorized Personnel.
- The Mass HIway permits Users that have been authenticated and authorized by a HIway Trusted HISP to exchange Direct Messages with Mass HIway Participants and their Authorized Personnel.
- The Mass HIway uses a secure data center to facilitate Direct Messaging. The data center uses appropriate administrative, technical, and physical safeguards in compliance with the HIPAA Security Rule.
- The Mass HIway encrypts all data sent via Direct Messaging so that it may not be intercepted and accessed in line with the Direct Standard. The Mass HIway works with HIway Trusted HISPs to encrypt data coming from and going to the HIway Trusted HISPs.

## **12.3 LAND Safeguards**

The Mass HIway regularly monitors LAND devices for vulnerabilities and corrects such vulnerabilities when discovered. The Mass HIway keeps LAND technology up to date with appropriate security patches.

## **12.4 Webmail Safeguards**

### **12.4.1 Access to Webmail**

Participant shall use appropriate care to access Webmail only from computers and networks with adequate security and privacy for handling PHI.

### **12.4.2 Security Procedures**

Participant shall implement safeguards that are reasonable and appropriate to ensure the security of the Mass HIway. Security of any Authorized Personnel's PCs, laptops, tablets or other devices that use Webmail is the responsibility of the Participant. Participant must also have processes in place to reduce vulnerabilities for data breach. Security of webmail content downloaded via the Mass HIway Webmail interface is the responsibility of the Participant.

### **12.4.3 Webmail Capacity**

Each webmail account is subject to a storage capacity limit of 10MB per message, including attachments, and 1GB for the mailbox itself. The Mass HIway will notify Authorized Personnel when their webmail account has reached its storage capacity limit, after which the webmail account will not be able to receive additional messages until messages have been removed to allow additional storage. The Mass HIway will not delete or archive messages in a webmail account, nor will it deliver messages to an account when it is over its storage capacity limit.

### **12.4.4 Webmail Supported Browsers**

Webmail will be supported on PC/Mac browsers with a default or Medium security setting for versions as specified below:

- Internet Explorer 8+
- Firefox 5+

- Safari 5+

### **12.4.5 Workforce and Permitted Users**

Participant shall be responsible for training its own workforce regarding the fundamentals of operating the Mass HIway Web Portal in compliance with these Policies & Procedures.

### **12.4.6 Suspension of Account**

The Mass HIway may at any time suspend Participant's access to the Mass HIway Web Portal or suspend any Authorized Personnel as required to prevent unauthorized use of the Mass HIway Web Portal, to prevent, investigate, or remedy a privacy breach or security incident, or to protect the integrity of the information systems operated by EOHHS and its contractors. The Mass HIway may restore such access as determined by the Mass HIway in its sole discretion.

### **12.4.7 Tampering with Safeguards Prohibited**

Participant shall not attempt to disable, modify or circumvent any security safeguard adopted by the Mass HIway. The Mass HIway may monitor, record and audit Participant's use of the Mass HIway Web Portal in order to protect Patient privacy, protect the security of information maintained in databases, and protect the security of EOHHS' information system.

### **12.4.8 Participant Safeguards**

Participant shall implement reasonable and appropriate safeguards to protect the confidentiality, integrity and availability of the information it maintains, stores and transmits using the Mass HIway Web Portal and all information made available to Participants, including but not limited to keeping information such as user names and passwords confidential.

## **12.4 HIway-Sponsored Services**

Currently, there are no HIway-Sponsored Services. This section will be updated prior to release of new HIway-Sponsored Services including the anticipated Event Notification Service.

## **13. Breach Response**

---

### **13.1 Applicability of HIPAA "Breach" Definition**

As used in these Policies & Procedures, the term "Breach" shall have the same definition as that term has in the HIPAA Privacy and Security Rules.

The Mass HIway and its Participants will follow existing laws in cases of a security breach. In line with current laws governing breach, the Covered Entity will take primary responsibility for breach investigation and required notifications under the HIPAA Privacy and Security Rules.

### **13.2 Direct Messaging**

Consistent with the requirements of the HIPAA Privacy and Security Rules, the Mass HIway will notify a covered entity, without unreasonable delay, upon discovery of a breach of unsecured protected health information, and provide the covered entity with other available information, as required by law.

Authorized Personnel shall report all breach events to their Access Administrator and their organization's privacy and security officer(s) immediately upon discovery of the breach. The Access Administrator shall notify the Mass HIway of the breach event. Notification shall be provided by email and phone as provided in Section 15 of these Policies & Procedures. Other individuals who have information about breach events involving the Mass HIway are encouraged to file reports or complaints with the EOHHS privacy and security officer or his/her designee.

## **13.3 HIway-Sponsored Services**

Currently, there are no HIway-Sponsored Services. This section will be updated prior to release of new HIway-Sponsored Services including the anticipated Event Notification Service.

## **14. Participation Fees**

---

### **14.1 Direct Messaging**

#### **14.1.1 Pricing Considerations**

The Mass HIway's pricing philosophy continues to ensure all providers have affordable access to the exchange of health information through the Mass HIway. Mass HIway services are flexible to the services Participants access and to the ways in which these services are deployed. Mass HIway pricing is designed around this flexibility.

Participants may connect to the Mass HIway directly through their electronic health record if available, or through a Local Access Network Distribution (LAND) appliance or via Webmail. These methods are discussed in more detail in the Participation Agreement, included as Appendix A.

Participants may access the Mass HIway through a single node (connection) or through multiple nodes.

Prices have two components:

- One time set up fee
- Annual services delivery fee

The annual HIE services delivery fee is based on the Participant's connection type(s) and number of connections.

HIE services fees are fixed regardless of message volume, message size, number of users or number of underlying organizations. For example, a legal entity with multiple sub-organizations (e.g. Integrated Delivery Network) may purchase a single node and take responsibility for all onward message handling. Webmail fees are fixed per mailbox and subject to storage and message size restrictions.

Prices DO NOT include cost of modifying the electronic health record or other IT system to meet Mass HIway integration requirements. Participants are responsible for modifying their EHR or IT systems as needed.

Fees are tiered into categories based on Participant organization size and type as noted below.

The Mass HIway encourages Technical Integrators to assist Participants to connect to the Mass HIway. In general, the Technical Integrator will not be charged a fee. However, a Technical Integrator may pay fees on behalf of the Participants it connects to the Mass HIway.

- If the Technical Integrator pays the fee on behalf of all members of a MassHealth ACO, or all members of a consortium of MassHealth CPs or CSAs, it will be considered a “Category 2h – MassHealth ACO, CP, or CSA Technical Integrator” type. If a Participant wishes to act as a Technical Integrator for all members of a MassHealth ACO, or all members of a consortium of MassHealth CPs or CSAs, to which it belongs, and the Participant plans to pay on behalf of the additional parties, the Participant will be charged the a “Category 2h – MassHealth ACO, CP, or CSA Technical Integrator” fee and will not be charged separately as a Participant.
- If the Technical Integrator pays the fee on behalf of the Participant, other than members of a MassHealth ACO, or members of a consortium of MassHealth CPs or CSAs, it will be considered a "Category 1c – Technical Integrator" type. This rate allows a Technical Integrator to connect as many Participants as they like. If Participant wishes to act as a Technical Integrator on behalf of trading partners or other related entities, and the Participant plans to pay on behalf of the additional parties, the Participant would be charged the "Category 1c – Technical Integrator" fee and will not be charged separately as a Participant.

The Mass HIway does not charge for Health Information Service Providers (HISP) connections nor does it charge organizations to connect to the Mass HIway via a HISP.

A Participant may purchase an extra LAND for its test environment. Test LAND annual fee is \$10,000 for a large LAND or \$3,000 for a small LAND.

## 14.1.2 Rates

Tiered rates as of December 1, 2017 are as follows:

### Massachusetts Health Information Highway Rate Card effective December 1, 2017

Tier	Category	Description	One-time set-up fee (per node)	Direct Messaging Service		
				Annual Services Fee (per node)	Annual Services Fee + LAND (per node)	Annual Services Fee Webmail (per mailbox)
Tier 1	1a	Large hospitals/Health Systems	\$2,500	\$15,000	\$27,500	\$60
	1b	Health plans				
	1c	Multi-entity HIE or Technical Integrator (see 14.1.1)				
	1d	Commercial imaging centers & labs				
Tier 2	2a	Small hospitals	\$1,000	\$10,000	\$15,000	\$60
	2b	Large ambulatory practices (50+ licensed providers)				
	2c	Large LTCs (500+ licensed beds)				
	2d	Ambulatory Surgery Centers				
	2e	Ambulance and Emergency Response				
	2f	Business associate affiliates				
	2g	Local government/Public Health				
	2h	MassHealth ACO, CP, or CSA Technical Integrator (see 14.1.1)				
Tier 3	3a	Small LTC (< 500 licensed beds)	\$500	\$2,500	\$4,500	\$60
	3b	Large behavioral health (10+ licensed providers)				
	3d	Large FQHCs (10+ licensed providers)				
	3e	Medium ambulatory practices (10-49 licensed providers)				
Tier 4	4a	Small behavioral health (< 10 licensed providers)	\$25	\$175	\$250	\$60
	4b	Home health, LTSS				
	4c	Small FQHCs (< 10 licensed providers)				
	4d	Small ambulatory practices (3-9)				
	4e	Community Service Agency (CSA)				
	4f	CP or CSA management-only entity				
Tier 5	5a	Very Small ambulatory practices (1-2)	\$25	\$60	\$60	\$60

### 14.1.3 Pricing Categories Definitions

Pricing categories definitions are as follows:

Tier	Category Definition
Tier 1	<p><b>Large hospitals/Health Systems:</b> Large hospitals include teaching hospitals and/or large health care delivery systems. Includes: Baystate Health, Beth Israel Deaconess Medical Center, Boston Medical Center, Cambridge Health Alliance, Boston Children’s Hospital, Dana-Farber Cancer Institute, Lahey Health, MEEI, Mount Auburn Hospital, Partners HealthCare, Saint Vincent Hospital, Steward Health Care, Tufts Medical Center, UMass Memorial Health Care. Small hospitals include all others.</p>
	<p><b>Health Plans:</b> Health insurance carriers.</p>
	<p><b>Multi Entity HIE:</b> Health Information Exchange (HIE) networks that include more than one authorized legal entity (e.g., NEHEN, SafeHealth, Wellport).</p>
	<p><b>Technical Integrator:</b> Connects multiple entities other than members of a MassHealth ACO, or a MassHealth CP or CSA consortium. See 14.1.1 Pricing Considerations for details.</p>
	<p><b>Commercial Imaging and Lab Centers:</b> Standalone imaging and lab centers as defined by Massachusetts state licensing and not included in larger health systems.</p>
Tier 2	<p><b>Small Hospitals:</b> Hospitals or Healthcare systems not included in list of Large hospitals/Health Systems above.</p>
	<p><b>Large Ambulatory practices:</b> Practices with 50 or more licensed providers (MD/DO/NP/PA) in a single legal entity regardless of number of sites, and not otherwise included in larger systems (i.e. not employed or owned by a hospital or health system). Category does not include federally qualified health centers (FQHCs) or FQHC look-alikes.</p>
	<p><b>Large Long Term Care entities:</b> Nursing homes or nursing home systems with 500+ licensed beds (e.g., Kindred, Genesis, Golden Living Center, Wingate, Life Care Centers, Epoch Senior Healthcare, Radius Healthcare, Beaumont).</p>
	<p><b>Ambulatory surgical centers:</b> As defined by Massachusetts state licensing.</p>
	<p><b>Ambulance and Emergency Response:</b> Standalone emergency medical service providers as defined by Massachusetts state licensing and not included in larger systems.</p>
	<p><b>Business Associate Affiliates:</b> Business associates of participant covered entities.</p>

Tier	Category Definition
	<p><b>MassHealth ACO, CP, or CSA Technical Integrator:</b> Connects all members. See 14.1.1 Pricing Considerations for details.</p> <ul style="list-style-type: none"> <li>• ACO – Accountable Care Organization contracted to provide healthcare services by MassHealth</li> <li>• CP – Community Partner – a Behavioral Health or Long Term Services and Supports organization that contracts with one or more MassHealth ACO or MCO</li> <li>• CSA – Community Service Agency – Community-based youth and family organization contracted to provide care coordination and support services to MassHealth members</li> </ul>
Tier 3	<p><b>Small Long Term Care entities:</b> Nursing homes or nursing home systems with &lt;500 licensed beds.</p>
	<p><b>Large Behavioral health:</b> Standalone mental health or counseling clinics with 10+ licensed providers and not included in larger systems.</p>
	<p><b>Large Federally Qualified Health Centers:</b> FQHC and FQHC look-alikes with 10+ licensed providers. Does not include hospital-owned community based health clinics.</p>
	<p><b>Medium Ambulatory practices (10-49):</b> Practices with 10-49 licensed providers (MD/DO/NP/PA) in a single legal entity regardless of number of sites, and not otherwise included in larger systems (i.e. not employed or owned by a hospital or health system). Category does not include federally qualified health centers (FQHCs) or FQHC look-alikes.</p>
Tier 4	<p><b>Small Behavioral health:</b> Standalone mental health or counseling clinics with &lt; 10 licensed providers and not included in larger systems.</p>
	<p><b>Home Health:</b> Home Health providers that are Non-Medicare/Medicaid certified agencies. Standalone as defined by Massachusetts state licensing and not included in larger systems.</p>
	<p><b>Long Term Services and Supports (LTSS):</b> Medical supports only.</p>
	<p><b>Small Federally Qualified Health Centers:</b> FQHC and FQHC look-alikes with &lt; 10 licensed providers. Does not include hospital-owned community based health clinics.</p>
	<p><b>Small Ambulatory practices (3-9):</b> Practices with 3-9 licensed providers (MD/DO/NP/PA) in a single legal entity regardless of number of sites, and not otherwise included in larger systems (i.e. not employed or owned by a hospital or health system). Category does not include federally qualified health centers (FQHCs) or FQHC look-alikes.</p>

Tier	Category Definition
	<p><b>Community Service Agency (CSA):</b> Community-based youth and family organization contracted to provide care coordination and support services to MassHealth members.</p>
	<p><b>CP or CSA management-only entity:</b> Organization that provides management and/or administrative services to a CP or CSA but is not directly providing healthcare services, care coordination, or support services to patients.</p>
Tier 5	<p><b>Very Small Ambulatory practices (1-2):</b> Practices with 1-2 licensed providers (MD/DO/NP/PA) in a single legal entity regardless of number of sites, and not otherwise included in larger systems (i.e. not employed or owned by a hospital or health system). Category does not include federally qualified health centers (FQHCs) or FQHC look-alikes.</p>

#### 14.1.4 Fees and Invoicing

Fees are assessed annually for a federal fiscal year (October 1-September 30)

HIE services fees for Direct Messaging begin when a Participant's connection to the Mass HIway production environment is verified.

HIE services fees are pro-rated to the first of the calendar month following the beginning of the applicable service as defined above. Any refunds will follow the same pro-rated dates.

Fee waivers may be applied for use of the Mass HIway solely for public health reporting.

Annual fees for service in effect as of October 1st each year will be calculated after October 1st, then processed for invoicing. Fees for service initiated or changed during the year will be calculated and invoiced quarterly.

Payment is due within 30 days of invoice.

## 14.2 HIway-Sponsored Services

Currently, there are no HIway-Sponsored Services. This Section will be updated prior to release of new HIway-Sponsored Services including the anticipated Event Notification Service.

## **15. Contact the Mass HIway – Required Notifications**

---

Required notifications to the Mass HIway shall be sent in the form and format specified by these Policies & Procedures. Where the form and format of the notification is not specified, notifications may be sent by the following methods:

Email: [MassHIwaySupport@state.ma.us](mailto:MassHIwaySupport@state.ma.us)

Phone: 1.855.MAHIway (624-4929) Option 2

Postal mail:

Mass HIway Operations – Mail Stop 4088  
Executive Office of Health and Human Services  
Commonwealth of Massachusetts  
100 Hancock Street  
Quincy, MA 02171

For general inquiries, contact the Mass HIway at [MassHIway@state.ma.us](mailto:MassHIway@state.ma.us) or 1.855.MAHIway Option 1.

# **Appendix A- Mass HIway Participant Agreement and Business Associate Agreement**

## **MASS HIWAY PARTICIPATION AGREEMENT**

### **1. Purpose.**

This Participation Agreement is being entered into between the Massachusetts Executive Office of Health and Human Services (“EOHHS”) and [Name of Participant] (“Participant”), referred to herein individually as “Party” and collectively as “Parties”, in order to detail the terms and limitations of Participant’s access to and use of the Massachusetts Health Information Highway (“Mass HIway”) and its related online tools and services.

### **2. Scope.**

This Agreement governs the terms and limitations of Participant’s access to and use of the Mass HIway. Nothing in this Agreement shall preclude Participant from lawfully exchanging health information with the Commonwealth or with other providers who may or may not participate in the Mass HIway using other methods of communication, including but not limited to telephone, hard copy delivery, facsimile, and other Health Information Exchange (“HIE”) networks, and nothing in this Agreement shall apply to these alternative methods of communication.

### **3. Terms of Access**

The terms under which the Participant may access and use the Mass HIway are set forth in this Agreement, including its Attachments, and the Mass HIway Policies & Procedures (“Policies & Procedures”).

### **4. Amendments**

EOHHS may amend the terms of this Agreement from time to time. EOHHS will provide notice of changes by email to the Participant’s designated Access Administrator and by posting changes to the Mass HIway website in a manner and form that makes the changes readily available for review. EOHHS will post any such amendments on the Mass HIway website at least thirty days before implementation of the amendment, but reserves the right to provide less notice, including no prior notice, if EOHHS reasonably determines that less notice is necessary for the security of the Mass HIway, or unless the amendment is required in order for EOHHS, the Participant, or any other HIway User to comply with applicable laws or regulations. In that case, EOHHS may implement the amendment within a shorter period of time as EOHHS reasonably determines is appropriate under the circumstances, but will provide as much notice of the amendment as reasonably possible. It is the responsibility of the Participant to check the Mass HIway website periodically for such updates. Participant’s continued use of the Mass HIway shall constitute acknowledgement and acceptance of the amendments.

## **5. Order of Precedence**

This Participation Agreement supplements the Policies & Procedures. In the event of an express conflict between the terms of this Participation Agreement and the Policies & Procedures, the terms of this Participation Agreement will take precedence. Unless otherwise stated, capitalized terms shall have the same meaning as they have in the Policies & Procedures.

## **6. Business Associate Terms**

The Parties hereby acknowledge that use of the Mass HIway involves transmission of Protected Health Information or other personally identifiable information. The Parties shall comply with the terms of the Business Associate Agreement included in this Participation Agreement as Attachment 1.

## **7. Participant Compliance with Mass HIway Policies & Procedures**

Participant hereby agrees to comply with the provisions of the Policies & Procedures, as amended, including without limitation those provisions governing Access Control (Section 7) and Safeguards (Section 12).

## **8. Authority Delegated to Participants**

EOHHS hereby delegates, and Participant hereby acknowledges and accepts, the authority and responsibility to control individual access to the Mass HIway through Participant's HIway connection. Participants shall implement all delegated responsibilities set forth in the Mass HIway Policies & Procedures, including but not limited to those set forth in Section 7.3 "Delegated Authority – Access Control by Participants."

## **9. Technical Participation Requirements**

The Participant must access the Mass HIway by one of the following three methods:

- 1) Direct XDR
- 2) Local Access Network Distribution (LAND) Appliance
- 3) Direct Webmail

These methods of connection are provided through EOHHS contractors and their subcontractors, licensors and suppliers, referred to herein individually as "Contractor" and collectively as "Contractors". The Participant must select at least one of these methods of connecting to the Mass HIway. Additional methods of connection may be added at a later date through amendment of this Participation Agreement.

The applicability of the following Sections 9.1 through 9.3 shall vary depending on the method(s) by which the Participant elects to connect to the Mass HIway. For the purposes of Sections 9.1 through 9.3, a Participant that connects to the Mass HIway via Direct XDR shall be referred to as a "Direct Participant". A Participant that connects to the Mass HIway via a Local Access Network Distribution (LAND) Appliance shall be referred to as a "LAND Participant". A Participant that connects to the Mass HIway via Direct Webmail shall be referred to as a "Webmail Participant".

## **9.1 Direct XDR Additional Terms**

The following provisions shall apply to Direct Participants:

The Direct XDR service is provided to Participants through a Contractor in the form of Software as a Service (“SaaS”). If Participant elects to use the Direct XDR service (“SaaS Service”), Participant shall indemnify EOHHS and Contractor for any damages to Contractor resulting from Participant’s breach of its obligations under this Participant Agreement.

## **9.2 Local Access Network Distribution (LAND) Appliance Additional Terms**

The following provisions shall apply to LAND Participants:

(a) Without limiting the general meaning of the term “Contractor” defined above, as used in this Section 9.2, “LAND Contractor” shall mean any Contractor(s) used by EOHHS to provide hardware, software, or services in connection with the LAND Appliance.

(b) LAND License Grant

Subject to the terms and conditions of this Participation Agreement and the Policies & Procedures, LAND Participant is granted a non-exclusive, annual license, renewable upon payment of the annual fee, to use: (i) certain LAND Contractor proprietary computer software contained in the Appliance in binary executable form only (the "Software"), (ii) certain LAND Contractor supplied computer hardware (the "Hardware") and (iii) certain LAND Contractor proprietary documentation in the form generally made available by LAND Contractor to its customers for use with these deliverables, (the "Documentation"). The Software and Hardware are collectively referred to in this Section 9.2 as the Appliance ("Appliance"). The Appliance and Documentation are collectively referred to in this Section 9.2 as the "Product."

(c) LAND Intellectual Property Rights

"LAND Intellectual Property Rights" means in connection with the Product, any and all rights existing from time to time under patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide. The LAND Contractor, its licensors, and EOHHS will retain all ownership rights, title, and LAND Intellectual Property Rights in and to the Product. LAND Participant acknowledges that its possession, installation or use of the Product will not transfer to it any title to such property.

(d) Use of LAND Software, Documents, and Appliance

The LAND Participant hereby agrees that it shall not, nor shall it allow others to: (i) adapt, alter, modify, decompile, translate, disassemble, or reverse engineer the Product or any component thereof, including without limitation, the source code and any other underlying ideas or algorithms of the Software (except to the extent applicable laws specifically prohibit such restriction); (ii) alter the number of documents authorized for Participant’s use; (iii) create

separate license keys that enable the Software; (iv) copy the Software; (v) use the Product for high risk activities; (vi) transfer, sublicense, loan, sell, lease or use for timesharing or service bureau purposes the Product or any component thereof; or (vii) ship, divert, transship, transfer, export or re-export the Product or any component thereof into any country or use it in any manner prohibited by any export control laws, restrictions, or regulations administered by the U.S. Commerce Department's Bureau of Export Administration, the U.S. Department of Treasury's Office of Foreign Assets Control or any other applicable government agency. For the avoidance of doubt, nothing in this Participation Agreement nor in the Policies & Procedures grants to LAND Participant any rights whatsoever in or relating to the source code of the Software. Any trade names, trademarks, service marks, logos, trade dress, and any other distinctive or proprietary symbols, labels, designs or designations ("Brand Features") as well as any copyright or other proprietary notices appearing on or in the Product shall be maintained and shall not be removed, modified or altered by LAND Participant.

(e) License Term and Termination

The term of the license provided hereunder commences upon shipment of the Appliance to LAND Participant. In addition to any other rights of termination provided under this Participation Agreement, EOHHS may terminate this Participation Agreement, in whole or in part, (a) if the LAND Participant materially breaches this Agreement and does not cure such material breach within thirty (30) calendar days after receipt of written notice of such breach; (b) immediately following the failure to resolve the suspension of business, insolvency, institution of bankruptcy, liquidation proceedings by or against the LAND Participant, appointment of a trustee or receiver for LAND Participant's property or business, or any assignment, reorganization or arrangement by LAND Participant for the benefit of its creditors; (c) immediately, in the event that the LAND Contractor determines that the Product may be infringing and that no commercially reasonable alternative product is available or, (d) immediately if LAND Participant is in breach of the ownership, restricted use or confidential information provisions herein. Upon expiration or termination of this Agreement all licenses, and any other rights and services provided to LAND Participant as set forth in this Agreement, shall cease immediately and LAND Participant shall immediately return the Product, at LAND Participant's sole cost, to EOHHS as directed by EOHHS.

(f) Confidential Information

LAND Participant acknowledges that the source and object code of the Software remains a confidential trade secret of LAND Contractor and/or its licensors and that LAND Participant is not entitled to review either the object code or the source code of the Software for any reason at any time. LAND Participant shall not disclose or cause to be disclosed any Confidential Information of the LAND Contractor.

(g) LAND – Provisioning

The Mass HIway or its LAND Contractor will ship or deliver an Appliance to LAND Participant according to an agreed-to schedule following LAND Participant's election to use the LAND Services. LAND Contractor shall ensure such Appliance is configured for remote management to

allow for software upgrades installed automatically from a remote site and reinstallation of standard and specialized configuration parameters that will be retained electronically at a remote site to facilitate ready deployment of a replacement unit if necessary. The LAND Contractor shall provide Tier 2 and 3 technical support to LAND Participant as part of the annual fee established in Section 14 of the Policies & Procedures. If the LAND Contractor determines that an issue cannot be resolved remotely, the LAND Contractor will arrange to exchange the Appliance.

### **9.3 Webmail**

The following additional provisions shall apply to Webmail Participants:

#### **(a) Security Procedures**

Webmail Participants shall implement safeguards that are reasonable and appropriate to ensure the security of the Mass HIway. Webmail Participant shall secure its Authorized Users' PCs, laptops, tablets or other devices which use Webmail to connect to the Mass HIway. Webmail Participant shall also implement processes to reduce vulnerabilities for data breach. Webmail Participant is responsible for the security of webmail content downloaded via the Mass HIway Webmail interface. Such security procedures shall include administrative procedures, physical security measures, and technical security safeguards.

#### **(b) Webmail Capacity**

EOHHS will notify a Webmail Participant when an Authorized User's webmail account has reached its storage capacity limit, after which the webmail account will not be able to receive additional messages until messages have been removed to allow additional storage. EOHHS will inform the Participant's Access Administrator when an account has reached capacity. EOHHS will not delete or archive message in an Authorized User's webmail account, nor will it deliver messages to an account when it is over its storage capacity limit. **WEBMAIL PARTICIPANT AND ITS AUTHORIZED USER(S) AGREE AND ACKNOWLEDGE THAT THEY WILL NOT BE ABLE TO RECEIVE MESSAGES SENT TO THEIR WEBMAIL ACCOUNT WHEN IT IS OVER ITS STORAGE LIMIT CAPACITY.**

#### **(c) Supported Browsers**

The Mass HIway supports browsers based on a default or Medium security setting as specified in the Policies & Procedures. A list of specific browsers supported is included in the Policies & Procedures.

### **10. Mass HIway Web Portal Terms**

The following additional provisions shall apply to the use of Mass HIway Web Portal:

#### **(a) Workforce and Permitted Users**

Participant shall be responsible for training its own workforce regarding the fundamentals of operating the Mass HIway Web Portal. Participant shall comply with all Mass HIway policies

relating to the use of the Portal, including without limitation Mass HIway privacy, information security, and permitted use policies as further described in the Policies & Procedures.

(b) Suspension of Account

EOHHS may at any time suspend Participant's access to the Mass HIway Web Portal or suspend any Authorized User in order to prevent unauthorized use of the Mass HIway Web Portal, to prevent, investigate, or remedy a privacy breach or security incident, or to protect the integrity of the information systems operated by EOHHS and its Contractors. EOHHS may restore such access as determined by EOHHS in its sole discretion.

(c) EOHHS Safeguards

Participant shall not attempt to disable, modify or circumvent any security safeguard adopted by EOHHS. Participant acknowledges and agrees that EOHHS may monitor, record and audit Participant's use of the Mass HIway Web Portal in order to protect patient privacy, protect the security of information maintained in databases, and protect the security of EOHHS's information system.

(d) Participant Safeguards

Participant shall implement reasonable and appropriate safeguards to protect the confidentiality, integrity and availability of the information it maintains, stores and transmits using the Mass HIway Web Portal and all information made available to Participant, including but not limited to keeping information such as user names and passwords confidential.

## **11. Use, Ownership, and Intellectual Property**

### **11.1 Retention of Ownership Rights**

Participant and EOHHS retain all rights not expressly granted herein, including each Party's rights to and ownership of their content, data, confidential information, and any other information or materials relating to or exchanged via the Mass HIway.

### **11.2 Software Certificate, Private Keys, and Network Connected Appliance**

Participant acknowledges and agrees that its possession, installation or use of any EOHHS or EOHHS Contractor software or appliance, HIE related software, private keys or other devices, appliances and HIE-related intellectual property ("EOHHS Technology") in conjunction with its use of the Mass HIway, or the payment of any fee established in Section 14 of the Policies & Procedures, will not transfer to Participant any title to the EOHHS Technology and Participant agrees to comply with any terms of use related to such EOHHS Technology. Any EOHHS Technology must be securely stored at the Participant's location. If any EOHHS Technology is compromised, it is the responsibility of the Participant to notify EOHHS immediately after discovery of such compromise of the EOHHS Technology.

## **12. Miscellaneous Terms and Conditions.**

### **12.1 Term and Termination.**

The term of this Agreement shall commence upon the Effective Date specified below and shall continue until terminated. Either Participant or EOHHS may terminate this Agreement without cause upon not less than thirty (30) days prior written notice, at which time this Agreement, and Participant's access to the Mass HIway, shall terminate.

### **12.2 Suspension of Access**

EOHHS may, at any time, suspend Participant's access to the Mass HIway or suspend any user account associated with Participant, as required in its sole discretion, to prevent unauthorized use of the Mass HIway, to prevent, investigate, or remedy a privacy breach or security incident, or to protect the integrity of the information systems operated by EOHHS and its Contractors or for non-payment of fees established in Section 14 of the Policies & Procedures. Restoration of such access or account may be at EOHHS' sole discretion.

### **12.3 Accuracy of Information.**

(a) Participant hereby acknowledges and agrees that all information available through the Mass HIway originates from and is controlled by the Participant and/or other HIway Participants, and not EOHHS. All such information is subject to change arising from numerous factors, including without limitation, changes to patient health information made at the request of the patient, changes in the patient's health condition, the passage of time and other factors. EOHHS neither initiates the transmission of any data via the Mass HIway nor monitors the content of data being transmitted. EOHHS has no responsibility, makes no guarantees, and assumes no liability for the accuracy, content, currency, completeness, content or delivery of any information either transmitted to or accessed by the Participant via the Mass HIway. In time sensitive or life threatening situations, Participant should use additional means of communication and not rely solely on the Mass HIway to communicate.

(c) Use of the Mass HIway is not a substitute for a health care provider's standard practice or professional judgment. Any decisions with respect to the appropriateness of diagnoses or treatments or the validity or reliability of information transmitted via the Mass HIway are the sole responsibility of the patient's health care provider.

### **12.4 Disclaimer of Liability.**

Except as may be required by law (and in that sole case, only to the extent required by law), EOHHS and its Contractor(s) disclaim all liability whatsoever arising out of Participant's use of the Mass HIway, and of the products and services described in this Participation Agreement.

### **12.5 NO WARRANTIES.**

ACCESS TO THE MASS HIWAY, INCLUDING ALL PRODUCTS AND SERVICES DESCRIBED IN THIS PARTICIPATION AGREEMENT, WHETHER PROVIDED BY EOHHS OR ITS

CONTRACTOR(S), AND THE INFORMATION OBTAINED OR TRANSMITTED BY THE PARTICIPANT BY USE OF THE MASS HIWAY ARE PRODUCTS, SERVICES AND INFORMATION PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. EOHHS AND ITS CONTRACTOR(S) DO NOT WARRANT THAT THE PRODUCT OR SERVICES, OR ANY PORTION THEREOF, ARE ERROR OR BUG FREE, OR THAT PARTICIPANT’S USE OF THE PRODUCT OR SERVICES WILL BE UNINTERRUPTED. EOHHS AND ITS CONTRACTOR(S) ASSUME NO RESPONSIBILITY FOR THE PROPER INSTALLATION AND USE OF THESE PRODUCTS OR SERVICES. THE PARTICIPANT IS SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE MASS HIWAY OR THE INFORMATION OBTAINED OR TRANSMITTED BY USE OF THE MASS HIWAY, INCLUDING INACCURATE OR INCOMPLETE INFORMATION. EOHHS AND ITS CONTRACTOR(S) MAKE NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY THESE PRODUCT OR SERVICES. IT IS EXPRESSLY AGREED THAT IN NO EVENT WILL EOHHS BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTY DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE MASS HIWAY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES. IN THAT EVENT, TO THE EXTENT PERMISSIBLE, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM (i) THE DATE OF SHIPMENT OF THE APPLICABLE PRODUCT OR (ii) THE DATE PARTICIPANT FIRST USES THE SERVICES.

**12.6 Severability.**

Any provision of this Agreement which is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

**12.7 Governing Laws.**

This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of law provisions, and the Commonwealth of Massachusetts shall be the sole forum for resolution of disputes regarding this Agreement or the subject matter thereof.

**12.8 Survival.**

The obligations of this Agreement that by their terms naturally survive the expiration or termination of this Agreement, shall so survive, including without limitation Sections 9.1, 9.2, 10.4, 10.5, 10.6, 10.8, and Attachment 1 - Business Associate Agreement.

**13. Participation Agreement Execution**

IN WITNESS WHEREOF, the Participant hereby executes this Agreement by signing in the places allocated below according to the convention /s/ Name, and agrees said electronic signature shall be valid and binding under the Uniform Electronic Transactions Act and the E-Signatures in Global and National Commerce Act and other applicable law.

---

Participant (Legal Entity Name)

---

By (Signature)

---

Name (Printed Name)

---

Title

---

Date (the Effective Date)

## **ATTACHMENT 1: BUSINESS ASSOCIATE AGREEMENT**

### **Definitions**

#### Catch-all definitions:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

#### Specific definitions:

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the Commonwealth of Massachusetts, Executive Office of Health and Human Services.

(b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean [Insert Name of Covered Entity].

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

(d) Participation Agreement. "Participation Agreement" shall mean the agreement executed by the Business Associate and the Covered Entity governing the terms and limitations of the Covered Entity's access to and use of the Mass HIway ("Mass HIway").

### **Obligations and Activities of Business Associate**

Business Associate agrees to:

(a) Not use or disclose protected health information other than as permitted or required by this Agreement or as required by law;

(b) Use appropriate safeguards, and comply, where applicable, with Subpart C of 45 CFR Part 164 of the HIPPA Rules with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Agreement or as required by law;

(c) Report to Covered Entity any use or disclosure of protected health information not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410;

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;

(e) Make available protected health information in a designated record set to the

Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

(f) Make available protected health information for amendment and incorporate any amendment(s) to protected health information in a designated record set in accordance with 45 CFR 164.526;

(g) Maintain and make available the information required to provide an accounting of disclosures to the covered entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

(h) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

### **Permitted Uses and Disclosures by Business Associate**

(a) Business Associate may only use or disclose protected health information as necessary to perform the services, functions, and activities set forth in the laws and regulations governing access to, and use of, the Mass HIway, including 101 CMR 20.00 *et seq.*, the *Mass HIway Policies & Procedures*, and any subsequently published conditions of participation, guidelines, and bulletins, or as required by law.

(b) Business Associate is authorized to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c).

(c) Business Associate agrees to make uses and disclosures and requests for protected health information only as minimally necessary to perform the services, functions, and activities of the Mass HIway.

(d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity, except for the specific uses and disclosures set forth below.

(e) Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(f) Business Associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(g) Business Associate may provide data aggregation services relating to the health care operations of the covered entity.

### **Permissible Requests by Covered Entity**

The covered entity shall not request that the Business Associate use or disclose, protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except that:

- (a) Business Associate may use and disclose protected health information for the proper management and administration of the business associate as set forth above; and
- (b) Business Associate may provide data aggregation services relating to the health care operations of the covered entity as set forth above.

### **Term and Termination**

(a) Term. The Term of this Agreement shall be effective upon mutual execution of the Participation Agreement, and shall terminate upon termination of the Participation Agreement or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business Associate authorizes termination of this Agreement by covered entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and business associate has not cured the breach or ended the violation within a reasonable time, as specified by Covered Entity.

(c) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate shall, if feasible, return or destroy all protected health information received from, or created or received by the Business Associate on behalf of, the Covered Entity that the Business Associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

(d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

### **Miscellaneous**

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.