



## **Frequently Asked Questions (FAQs):**

### **1. Background about the Mass HIway Regulations and M.G.L. Chapter 118I**

#### **1.1. Q: How were the Mass HIway Regulations developed?**

**A:** The regulations were developed through an open, transparent process, during which EOHHS gathered feedback from the state's Health Information Technology (HIT) Council, the Council's advisory groups, and other stakeholders from across the state. The process included a public comment period and public hearing held in the fall of 2016. The regulations went into effect in February 2017.

#### **1.2. Q: What is the purpose of the Mass HIway Regulations?**

**A:** The Mass HIway Regulations establish requirements relating to health information technology and the state-sponsored, statewide Health Information Exchange (HIE), the Mass HIway. Specifically, the Mass HIway Regulations do the following:

- Establish requirements for organizations that use the Mass HIway
- Implement the HIway connection requirement, which is the requirement for providers in the state of Massachusetts to connect to the Mass HIway, as set forth in M.G.L. Chapter 118I (Section 7)
- Establish the mechanism to allow patients to opt-in and opt-out of the Mass HIway

## 2. The HIway connection requirement: who and when

### 2.1. Q: What is the scope of the Mass HIway Regulations?

**A:** The Mass HIway Regulations govern participation in the Mass HIway and related health information technology. This includes participation in the HIway by the following entities (which are defined in 101 CMR 20.05):

- HIway Participants (i.e., provider organizations or other entities approved by EOHHS that are granted access to the Mass HIway directly by the Mass HIway, and which must execute a Participation Agreement)
- Non-Participant Users (i.e., organizations that are granted access to the Mass HIway through a HIway Trusted HISP)
- HIway Trusted HISPs (i.e., a Health Information Service Provider (HISP) which has executed an agreement with the Mass HIway)

The Mass HIway Regulations apply to all provider organizations that participate in the Mass HIway, including those that do not yet have a required HIway connection date.

All Provider Organizations that are required to connect to the Mass HIway will do so either as a HIway Participant or Non-Participant User.

### 2.2. Q: What is the *HIway connection requirement*?

**A:** The *HIway connection requirement* is the requirement that all provider organizations within Massachusetts connect to the Mass HIway, as set forth in M.G.L. Chapter 118I, Section 7, and as detailed in the Mass HIway Regulations (101 CMR 20.00).

The Mass HIway Regulations (101 CMR 20.08) specify required HIway connection dates for the following defined types of Provider Organizations: Acute Care Hospitals, Large and Medium Medical Ambulatory Practices, and Large and Small Community Health Centers. EOHHS may define additional types of provider organizations and establish HIway connection dates for those organizations through administrative bulletins or other official issuances. In this case, affected provider organizations will be given at least one year to connect to the Mass HIway.

Having a technical connection to the Mass HIway without using that connection is not sufficient to meet the HIway connection requirement. The regulations describe (101 CMR 20.08) that fulfilling the HIway connection requirement involves sending and/or receiving HIway Direct Messages for Use Cases.

### 2.3. Q: Are individual providers, such as a physician, nurse practitioner, pharmacist, or laboratory technician, required to connect to the Mass HIway?

**A:** No, not at this time. Under the regulations (101 CMR 20.08) specified Provider Organizations are required to connect to the Mass HIway, rather than individual health care providers who hold a professional license in the state.

### 2.4. Q: What Provider Organizations are required to connect to the Mass HIway?

**A:** All provider organizations in Massachusetts are required to connect to the Mass HIway (M.G.L. Ch. 118I, Section 7). However, under the regulations (101 CMR 20.08), only the following types of Provider Organizations currently have specified required HIway connection dates: Acute Care Hospitals, Large and Medium Medical Ambulatory Practices, and Large and Small Community Health Centers.





2.10. Q: If a Provider Organization with a required HIway connection date is

- ❑
- ❑
- ❑

**A:** Each HIway Participant that is connected to the Mass HIway via a Mass HIway Integrator, and that is also a Provider Organization with a required HIway connection date, must attest for itself, as specified in FAQ #2.9.

A Mass HIway Integrator is defined (in Section 2.2.5 of the Mass HIway Policies and Procedures) as an organization that connects Mass HIway Participants to the Mass HIway. Integrators 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.

**2.11.Q: Is there help for Provider Organizations who want to connect to the Mass HIway?**

**A:** Yes, the Mass HIway Account Management team can assist your organization through the process of enrollment, onboarding, and connection to the Mass HIway. Contact the team via email at [MassHIway@state.ma.us](mailto:MassHIway@state.ma.us) or call 1-855-MA-HIway (624-4929) option 1 to get started.

### 3. The HIway connection requirement: how organizations fulfill the requirement

#### 3.1. Q: Why do the Mass HIway Regulations use a 4-year phased-in approach for using HIway Direct Messaging?

**A:** The regulations implement the M.G.L. Chapter 118I's requirement that providers implement interoperable EHR systems that connect to the Mass HIway by using a phased-in approach in recognition of the following several factors:

(1) Phasing in the requirements recognizes that technical and operational readiness among Provider Organizations, as well as the availability of interoperable systems, varies widely;

(2) The regulations require the implementation of HIway Direct Messaging for at least one use case, instead of just requiring a technical connection to the Mass HIway. The regulations focus on use cases in order to emphasize that the use of HIway Direct Messaging should be meaningful, and that the messages are being used by the recipient;

(3) The regulations call for using HIway Direct Messaging for at least one use case in Years 1, 2 and 3, rather than requiring a certain number of transactions. This avoids setting a target number that would be appropriate for some Provider Organizations and not for others, and sets a minimum level of interoperability without burdening providers with a specific number of transactions that they need to meet;

(4) In Year 1, the connection requirement is fulfilled by sending or receiving HIway Direct Messages for at least one use case within any category of use cases. This includes public health and quality reporting. In Year 2 there must be at least one use case of sending or receiving within the category of Provider to Provider Communications. This approach progressively encourages using the Mass HIway to implement Provider to Provider communications in clinical practice.

(5) In Year 1 and Year 2, Provider Organizations must either send or receive HIway Direct Messages for at least one use case to fulfill the connection requirement, while in Year 3 they must both send and receive HIway Direct Messages for at least one use case. This approach implements the goal of bi-directional exchange of health information, and addresses stakeholder input that requiring both sending and receiving of information will help avoid two situations: (1) the scenario where a Provider Organization is ready to send information (e.g., a hospital ready to send discharge summaries to primary care providers), but is unable to find organizations ready to receive; (2) the scenario where a Provider Organization is sending information electronically in compliance with a state or federal requirement, but these messages are not being used by the recipient because the same information is simultaneously being sent over less secure methods such as by fax.

In order to attest to the HIway connection requirement, Provider Organizations must confirm that they have coordinated with the sending and/or receiving organization to establish that the organization is able to use the transmission. The goal is to use HIway Direct Messaging in order to replace less secure methods of sending and/or receiving information, such as fax or mail.

### **3.2. Q: What is the definition of a *Use Case* in the HIway connection requirement?**

**A:** Having a technical connection to the Mass HIway without using that connection is not sufficient to meet the HIway connection requirement. The regulations describe (101 CMR 20.08) that fulfilling the HIway connection requirement involves sending and/or receiving HIway Direct Messages for Use Cases.

EOHHS expects that the Provider Organization will use HIway Direct Messaging, to the extent feasible, for all instances of information sharing that are a part of the implemented Use Case, regardless of the number of HIway Direct Messages transmitted as part of the implemented Use Case. However, in 2018, using HIway Direct Messaging for all instances of information sharing that are part of the implemented Use Case is not required. In some implemented Use Cases, Provider Organizations may use HIway Direct Messaging for some instances of information sharing, while using alternate methods (e.g., fax or mail) for other instances. For example, a hospital might send discharge summaries to Department X at Nursing Home A *via HIway Direct Messaging*, while sending discharge summaries to Department Y at Nursing Home A *via fax*.

Implementation of a Use Case involves using HIway Direct Messaging as part of an ongoing workflow, and therefore using HIway Direct Messaging for a pilot project, or being in a testing phase of using HIway Direct Messaging, is not considered to be a fully implemented a Use Case.

A Use Case is defined (101 CMR 20.04) as a narrative that describes how to accomplish a business goal that can be implemented between two or more organizations. Categories of Use Cases include the following categories:

- a) Provider to Provider Communications (e.g., an Acute Care Hospital sending discharge summary to a primary care provider)
- b) Payer Case Management
- c) Quality Reporting
- d) Public Health Reporting (e.g., sending immunization information to the state Department of Public Health)

A goal of the HIway connection requirement is to replace less secure methods of sending and/or receiving information, such as fax or mail. However, in some implemented Use Cases, Provider Organizations may use HIway Direct Messaging while continuing to send the *same* information via other methods (e.g., fax or mail). For example, a hospital might send discharge summaries to Primary Care Practice X via HIway Direct Messaging, while also sending the *same* discharge summaries to that Primary Care Practice via fax or postal mail.

Although it is a goal of the HIway connection requirement to replace less secure methods of transmitting information (e.g. fax or mail), it is not a requirement in 2018 for HIway Direct Messaging to be the sole method of transmitting information as part of the implemented Use Case.

### **3.3. Q: Can a Provider Organization fulfill the HIway connection requirement if it sends or receives HIway Direct Messages as part of a pilot project?**

**A:** No. To fulfill the HIway connection requirement of sending or receiving HIway Direct Messages for at least one Use Case, a Provider Organization must implement a Use Case that involves HIway Direct Messages as part of an ongoing workflow, and not just part of a time-limited or pilot project.



**3.4. Q: Can a Provider Organization fulfill the HIway connection requirement if it is in the testing phase of implementing HIway Direct Messaging for a Use Case?**

**A:** No. To fulfill the HIway connection requirement of sending or receiving HIway Direct Messages for at least one Use Case, a Provider Organization must implement a Use Case that involves HIway Direct Messages such that any testing has been completed, and such that sending or receiving HIway Direct Messages is part of an ongoing workflow that has proceeded beyond a planning or testing phase.

**3.5. Q: Do the Mass HIway Regulations allow Provider Organizations to fulfill the HIway connection requirement with health information exchanges outside the Mass HIway?**

**A:** All Provider Organizations with a HIway connection date that is specified in the regulations are required to connect to the Mass HIway even if they are connected to other health information exchanges. However, under the regulations (101 CMR 20.15(1d)) a Provider Organization may be granted a waiver if it successfully implements provider to provider direct messaging outside of the Mass HIway (e.g., using a non-Mass HIway HISP) and does not have any trading partners on the Mass HIway to implement a provider to provider communications use case. In this case, the Provider Organization still must demonstrate the technical capability to send and receive HIway Direct Messages with a HIway Participant. This provision supports the Mass HIway's mission to provide interoperability across the state and provide health information exchange that is accessible to all eligible Provider Organizations statewide regardless of size, location or level of technology.

**3.6. Q: Can the same Use Case be used in the Attestation Form of consecutive years?**

**A:** A Provider Organization may rely on the same Use Case when completing an Attestation Form in consecutive years if that Use Case otherwise meets the Provider Organization's HIway connection requirement for the applicable year. For example, if a Provider Organization described a Use Case that is in the Provider to Provider Communications category of Use Cases in its Year 1 Attestation Form, then that Provider Organization could describe the same Use Case in its Year 2 Attestation Form, if that Use Case still was being utilized in Year 2. In this example, updated information (e.g., the estimated message volume for this Use Case) should be provided in the Year 2 Attestation Form.

**3.7. Q: Can a Provider Organization submit an Attestation Form in the year prior to the year that the Attestation Form is due?**

**A:** No. A Provider Organization that is ready to submit an Attestation Form that describes how it has met its HIway connection requirement should wait until the calendar year that the Attestation Form is due. In other words, Attestation Forms are currently accepted no more than six months in advance.

**3.8. Q: What must a Provider Organization do if it does not meet its 2018 HIway connection requirement?**

**A:** If a Provider Organization does not meet its 2018 HIway connection requirement, then instead of completing an Attestation Form, an authorized representative of the Provider Organization is required to email the Mass HIway (at [MassHIwayAttestation@state.ma.us](mailto:MassHIwayAttestation@state.ma.us)) by July 1, 2018 with the following information:

- a) Legal name of the Provider Organization
- b) Street address for the Provider Organization
- c) Type of Provider Organization (i.e., Acute Care Hospital, Large or Medium Medical Ambulatory Practice, or Large Community Health Center)
- d) Reason for not complying with the HIway connection requirement

- e) The EMR/EHR system(s) that your Provider Organization is using, including name(s) and version number(s)
- f) Brief description of the Provider Organization's plan to comply with the HIway connection requirement. The plan should include an estimated timeline.
- g) Contact information of person(s) at the Provider Organization (including names, phone number, email address and title/role for each contact person)

The Mass HIway may contact the Provider Organization to discuss that Provider Organization's plans to comply with its 2018 HIway connection requirement.

If a Provider Organization does not meet its Year 1 HIway connection requirement in 2018, the organization is still expected to meet its Year 2 HIway connection requirement in 2019 and submit a Year 2 HIway Attestation Form by July 1, 2019.

If a Provider Organization does not meet its Year 2 HIway connection requirement in 2018, the organization is still expected to meet its Year 3 HIway connection requirement in 2019 and submit a Year 3 HIway Attestation Form by July 1, 2019.

As required by M.G.L. c. 118I, Section 8, the Mass HIway Regulations (101 CMR 20.13-20.16) establish penalties for not meeting the HIway connection requirement. These penalties begin in Year 4 of a Provider Organization's HIway connection requirement.

#### **4. Penalties for non-compliance with the HIway connection requirement**

##### **4.1. Q: When do the penalties for non-compliance with the HIway connection requirement take effect?**

**A:** Under the phased-in approach implemented by the regulations (101 CMR 20.13 and 20.14), penalties for non-compliance with the HIway connection requirement do not take effect until Year 4 of the connection requirement (i.e., in January 2020, at the earliest).

##### **4.2. Q: What are the penalties for not meeting the HIway connection requirement?**

**A:** Under the regulations (101 CMR 20.14), penalties range from \$1,000 to \$30,000 per year for different Provider Organizations.

##### **4.3. Q: What is the waiver process for Provider Organizations that are unable to fulfill the requirement to connect to the Mass HIway?**

**A:** Under the regulations (101 CMR 20.15), EOHHS may grant a waiver of the HIway connection requirement. Waiver criteria include, but are not limited to, catastrophic events, extenuating circumstances, or an organization not having trading partners on the Mass HIway to implement a HIway Direct Messaging use case within the category of Provider to Provider Communications.

Penalties for not meeting the HIway connection requirement begin in Year 4 of a Provider Organization's HIway connection requirement. EOHHS will not accept waiver requests until the start of Year 3 of Provider Organizations' HIway connection requirement, and not before that point. Therefore, EOHHS will not accept waiver requests until January 2019 for Acute Care Hospitals, January 2020 for Large and Medium Medical Ambulatory Practices, and January 2020 for Large Community Health Centers.

Please see FAQ #3.8 for a discussion of what a Provider Organization is required to do if it does not meet its Year 1, Year 2, or Year 3 HIway connection requirement.

##### **4.4. Q: What is the appeals process related to penalty determinations made by EOHHS?**

**A:** Under the regulations (101 CMR 20.16), there is a "Reconsideration and Appeals Process" which includes the method by which: (a) EOHHS will notify Provider Organizations that fail to comply with the HIway connection requirement, (b) Provider Organizations can request EOHHS to review and reconsider their penalty determination, and (c) Provider Organizations can appeal EOHHS' final determination to assess a penalty for not meeting the HIway connection requirement.

## 5. The opt-in opt-out mechanism for the Mass HIway

### 5.5. Q: How does the opt-in opt-out mechanism impact HIway Direct Messaging?

**A:** Under the regulations (101 CMR 20.07(1)), Mass HIway Users may transmit information via HIway Direct Messaging in compliance with applicable federal privacy laws and regulations (such as HIPAA and 42 CFR Part 2) and state privacy laws and regulations (such as M.G.L. Chapter 93H), similar to sending such information via fax message.

HIway Participants may elect to implement local opt-in and/or opt-out processes that apply to their organization's use of HIway Direct Messaging. This option was provided in recognition of stakeholder input that some organizations wanted to implement a local process.

### 5.6. Q: What information for patients is available about HIway Direct Messaging?

**A:** There is a *Mass HIway Fact Sheet for Patients* available on the Mass HIway website at [www.masshiway.net](http://www.masshiway.net). Provider Organizations that use HIway Direct Messaging are not required to give this document to each patient, but Provider Organizations can make the document available to patients if they chose to do so. For more information, patients can also visit the "Patients and Families" section on the Mass HIway website.

Patients can contact the Mass HIway directly by calling 1-855-MA-HIway (624-4929) Option 3 or emailing [MassHIway@state.ma.us](mailto:MassHIway@state.ma.us) with questions about the Mass HIway.

### 5.7. Q: What is the opt-in component of the Mass HIway's centralized opt-in opt-out mechanism for HIway-Sponsored Services?

**A:** Under the regulations (101 CMR 20.07(2a)), all HIway Participants must provide each patient and/or their legal representative with written notice of how the organization uses HIway-Sponsored Services, and that written notice must be provided by at least one of the following methods: (a) inclusion in the HIway Participant's privacy notice; (b) patient handout; or (c) letter, email, or other personal electronic communication to patients.

The Mass HIway's centralized opt-out system does not apply to HIway Direct Messaging. Mass HIway Users may transmit information via HIway Direct Messaging in compliance with applicable federal privacy laws and regulations (such as HIPAA and 42 CFR Part 2) and state privacy laws and regulations, similar to sending such information via fax message. Mass HIway Users may implement local opt-in and/or opt-out processes that apply to their organization's use of HIway Direct Messaging, but are not required to do so.

### 5.8. Q: Will EOHHS provide a sample written notice?

**A:** Yes. EOHHS intends to provide a sample written notice closer to the time that HIway-Sponsored Services are launched.

### 5.9. Q: What languages will the written notice need to be provided in?

**A:** Under the regulations (101 CMR 20.07(2a)), written notice must be available in languages as established by EOHHS in the *Mass HIway Policies & Procedures*. EOHHS anticipates providing more detailed guidance once the HIway-Sponsored Services are launched.

### 5.10. Q: Why was a centralized opt-out mechanism implemented, instead of a localized opt-out mechanism?

**A:** Under the regulations (101 CMR 20.02(2b)), there will be a forthcoming centralized opt-out mechanism for HIway-Sponsored Services. A *centralized* opt-out mechanism is being implemented for several reasons, including: (1) operating the opt-out mechanism centrally

can increase efficiency and help reduce the burden on provider organizations; and (2) having a single central record of who has opted-out of the HIway-Sponsored Services avoids conflicting records among various provider organizations.

**5.11. Q: What is the HIway-sponsored Event Notification Service?**

**A:** The HIway-sponsored Event Notification Service(ENS) is defined in the regulations as a HIway-Sponsored Service that would allow permitted recipients (e.g., a primary care physician) to receive notifications about certain patient medical service encounters, such as when a patient is admitted to a hospital (101 CMR 20.04).

To support the ENS, Acute Care Hospitals are required, as part of their HIway connection requirement, to send Admission Discharge Transfer notifications (ADTs) to the Mass HIway within 12 months of the ENS' launch.

**5.12. Q: When will operational details of the centralized opt-out be available?**

**A:** EOHHS anticipates that operational details of the centralized opt-out mechanism will be provided closer to the launch of HIway-Sponsored Services.

**5.13. Q: Are Provider Organizations allowed to implement local opt-in or opt-out processes?**

**A:** Yes. HIway Participants may elect to implement additional local opt-in and/or opt-out processes that apply to their organization's use of HIway-Sponsored Services (101 CMR 20.07(2c)). If a Mass HIway Participant chooses to implement a local process, then it must supplement, and not replace the HIway's opt-in and opt-out mechanism.

For example, a Provider Organization may decide to require its patients to sign an opt-in form for HIway-Sponsored Services, while another Provider Organization may allow patients to opt-in through an internet-based patient portal. These local processes could *supplement* the written notice and centralized opt-out mechanism.

**5.14. Q: Do the opt-in opt-out provisions of the regulations apply to local or regional health information exchanges?**

**A:** No. The opt-in opt-out provisions of the regulations (101 CMR 20.07) apply to use of the Mass HIway, which is the state-sponsored, statewide health information exchange. Local, regional, or private health information exchanges may develop their own policies and procedures regarding opt-in and opt-out that comply with all applicable laws and regulations. These policies and procedures may be similar to the opt-in opt-out provisions in the Mass HIway Regulations.

## 6. The requirements regarding Electronic Health Records (EHRs)

### 6.1. Q: Do the Mass HIway Regulations require that all providers in the Commonwealth have an interoperable EHR by January 2017? Do the regulations require that all providers have an interoperable EHR that connects to the HIway?

**A:** In order to implement Section 7 of M.G.L Chapter 118I that calls for providers to have an interoperable EHR system that connects to the Mass HIway, the regulations (101 CMR 20.10(1)) state that the Provider Organizations that have HIway connection dates specified in the regulations shall establish interoperability by implementing HIway Direct Messaging.

The regulations reference the *Mass HIway Policies & Procedures* which specify the different methods for implementing HIway Direct Messaging. Under Section 5.1 of the *Mass HIway Policies & Procedures (version 4)*, those different implementation methods include via: (a) an EHR's Direct XDR connection, (b) a Local Access for Network Distribution (LAND) appliance connection, (c) a Webmail connection, which does not require an EHR, (d) a HIway Trusted HISP, or (e) any other method approved by the Mass HIway. In other words, the regulations give Provider Organizations flexibility to connect to the Mass HIway via an EHR or via other means, and therefore it is possible for Provider Organizations that are required to connect to the Mass HIway by January 2020 to fulfill the requirement even if they do not have an EHR system. This flexibility is being provided in recognition that some Provider Organizations may not have a traditional EHR system such as what a hospital may have.

### 6.2. Q: What information will Provider Organizations need to provide the Mass HIway regarding their EHR, if they have one?

**A:** Under the regulations (101 CMR 20.10(2)) Provider Organizations with required dates for connecting to the Mass HIway must submit information regarding: (a) whether or not they have an EHR; (b) how their EHR, if any, connects to the Mass HIway; and (c) details about a specific use case implemented over the Mass HIway. The Attestation Forms for submitting this information are available on the Mass HIway website (at [www.masshiway.net](http://www.masshiway.net)).

## 7. The Mass HIway Policies & Procedures

### 7.1. Q: What are the *Mass HIway Policies & Procedures*?

**A:** The *Mass HIway Policies & Procedures* is the document that details the rules that govern access to and use of the Mass HIway. Under the regulations (101 CMR 20.05), all Mass HIway Users are required to comply with the *Mass HIway Policies & Procedures*. The current version of the *Mass HIway Policies & Procedures* is Version 4, updated December 1, 2017 and is available [here](#).

### 7.2. Q: What fees are associated with the use of the Mass HIway?

**A:** The fee schedule for using the Mass HIway is provided in the *Mass HIway Policies & Procedures*. This fee schedule establishes different tiers of HIway Participants, with larger participants (e.g., a large hospital) having higher fees than smaller ones (e.g., a small ambulatory practice). The current fees for using the Mass HIway are less than typical fees for health information exchange services, in order to achieve the HIway's mission of enabling health information exchange by all health care providers in the state, regardless of affiliation, location, or differences in technology.

## 8. FAQs regarding Community Health Centers

### 8.1. Q: How does a Community Health Center determine if it is large or small for the purposes of the Mass HIway Regulations?

A: The answer to this question is provided in FAQ #2.6.

### 8.2. Q: If a Large Community Health Center is an OCHIN member and has not connected to the Mass HIway prior to January 2018, then how should the Community Health Center approach the HIway connection requirement?

A: The Mass HIway is aware that there have been connectivity barriers between Large Community Health Center that are OCHIN members and the Mass HIway's original architecture. However, as part of the Mass HIway's planned upgrade to join the Direct Trust standard, these barriers are expected to be eliminated in early 2018.

The Mass HIway recognizes that Community Health Centers that are OCHIN members may not be able to meet the 2018 HIway connection requirement as a result of these connectivity barriers. If this is the case, the Community Health Center should contact the Mass HIway via email by July 1, 2018 and provide the information described in FAQ #3.8.

### 8.3. Q: If a single Community Health Center has one or more satellite locations or school-based satellite clinics, does each of these satellite locations need to submit a separate Attestation Form?

A: As discussed in FAQ #2.6, if a Community Health Center has a satellite location or a school-based satellite clinic, then the satellite does not need to submit a separate Attestation Form.

### 8.4. Q: If a Community Health Center uses both a primary EHR system and additional EHR systems for separate departments of the Community Health Center, then are multiple Attestation Forms required?

A: In calendar years 2018 and 2019, no individual departments of a Community Health Center (e.g., laboratory, dental, eye, or behavioral health departments) have separate HIway connection requirements. As such, in calendar years 2018 and 2019, the Community Health Center can complete and submit a single Attestation Form. Multiple Attestation Forms are not necessary for separate departments, and separate departments do not need to be listed as "sub-organizations" on the Attestation Form. The Attestation Form should provide information regarding the Community Health Center's primary EHR system.



## 9. FAQs regarding Medical Ambulatory Practices

### 9.5. Q: Is a Limited Services Clinic or a Freestanding Urgent Care Facility a Medical Ambulatory Practice for the purposes of the Mass HIway Regulations?

**A:** Limited Services Clinics (as defined in [105 CMR 140.000](#) et seq.) and Freestanding Urgent Care Facilities (as defined by the Massachusetts Department of Public Health) are not Medical Ambulatory Practices for the purposes of the Mass HIway Regulations. Therefore, Limited Services Clinics and Freestanding Urgent Care Facilities do not yet have a required HIway connection date that is specified in the regulations. However, these provider organizations are welcome to become Mass HIway Participants, in order to exchange electronic health information with other Mass HIway Participants.

M.G.L. Chapter 118I (Section 7) requires that all providers connect to the Mass HIway. EOHHS anticipates that Provider Organizations that do not yet have a date specified in the regulations for their HIway connection requirement will be required to connect at a date that will be specified in the future. The regulations (101 CMR 20.08(1b)) specify that future guidance will provide at least one year notice for affected provider organizations to connect to the Mass HIway.

### 9.6. Q: Is a behavioral health practice a Medical Ambulatory Practice for the purposes of the Mass HIway Regulations?

**A:** A provider organization that exclusively delivers behavioral health services is not a Medical Ambulatory Practice for the purposes of the Mass HIway Regulations. However, an ambulatory practice that provides both primary care and behavioral health services is a Medical Ambulatory Practice for the purposes of the Mass HIway Regulations.

Although provider organizations that exclusively deliver behavioral health services do not yet have a required HIway connection date that is specified in the regulations, these provider organizations are welcome to become Mass HIway Participants, in order to exchange electronic health information with other Mass HIway Participants.

M.G.L. Chapter 118I (Section 7) requires that all providers connect to the Mass HIway. EOHHS anticipates that Provider Organizations that do not yet have a date specified in the regulations for their HIway connection requirement will be required to connect at a date that will be specified in the future. The regulations (101 CMR 20.08(1b)) specify that future guidance will provide at least one year notice for affected provider organizations to connect to the Mass HIway.

### 9.7. Q: Is an out-of-hospital dialysis clinic a Medical Ambulatory Practice for the purposes of the Mass HIway Regulations?

**A:** An out-of-hospital dialysis clinic (as defined by [105 CMR 145.000](#)) is not a Medical Ambulatory Practice for the purposes of the Mass HIway Regulations.

Although out-of-hospital dialysis clinics do not yet have a required HIway connection date that is specified in the regulations, these provider organizations are welcome to become Mass HIway Participants, in order to exchange electronic health information with other Mass HIway Participants.

M.G.L. Chapter 118I (Section 7) requires that all providers connect to the Mass HIway. EOHHS anticipates that Provider Organizations that do not yet have a date specified in the regulations for their HIway connection requirement will be required to connect at a date that will be specified in the future. The regulations (101 CMR 20.08(1b)) specify that future guidance will provide at least one year notice for affected provider organizations to connect to the Mass HIway.

**9.8. Q: If a medical practice is providing both specialty inpatient and specialty outpatient health care services within the facilities of an Acute Care Hospital, then is this medical practice considered a Medical Ambulatory Practice?**

**A:** A medical practice that provides both specialty inpatient and specialty outpatient health care services within the facilities of an Acute Care Hospital is not considered a Medical Ambulatory Practice for the purpose of the Mass HIway Regulations if the following two criteria are met:

- (1) a majority of patients that the Provider Organization delivers services to are receiving services within an Acute Care Hospital's facilities, and
- (2) the Provider Organization uses the *same instance of an EHR system installation* that the Acute Care Hospital uses.

In the second criterion, if the medical practice and the Acute Care Hospital both use an EHR system that is made by the same vendor, but they use different *instances of an EHR system installation*, then this criterion has not been met.

For example, consider the case of a medical practice that consists of a group of emergency room physicians that exclusively cares for patients within the facilities of an Acute Care Hospital's emergency department, and this medical practice uses the same instance of the Acute Care Hospital's EHR system. In this case the medical practice of emergency room physicians is not considered a Medical Ambulatory Practice for the purpose of the regulations because: (1) all the patients they care for are receiving services within the Acute Care Hospital's facilities, and (2) the physicians in this medical practice use the same instance of an EHR system implementation as the Acute Care Hospital. Since this medical practice of emergency room physicians is not considered to be a Medical Ambulatory Practice for the purposes of the regulations, then at this time, it does not have a required HIway connection date and it is not required to submit an Attestation Form.

## 10. Other FAQs

### 10.1. Q: Can patients access their electronic health records via the Mass HIway?

**A:** No. At this time, the Mass HIway does not include a function for patients to access their electronic health records via the Mass HIway. The Mass HIway does not currently function as a clinical data repository that holds electronic medical records for individuals. Patient's electronic health record(s) are held by specific provider organizations, and these records are not made available to the Mass HIway.

Therefore, as provided in *Mass HIway Policies & Procedures* (Section 9.1.1), patients may request a copy of their medical record from the healthcare provider that holds the record.

### 10.2. Q: How do the Mass Regulations protect patient privacy?

**A:** The regulations maintain protection of patient privacy in several important ways. Any disclosure made over the Mass HIway must comply with state and federal privacy rules. Impermissible use or disclosure of individually identifiable patient health information by or through the Mass HIway is prohibited, and violators may be subject to penalties established under applicable state or federal law regarding the protection and privacy of personal information. The *Mass HIway Policies & Procedures* (Section 12.4.6) authorize the Mass HIway to suspend a HIway Participant's access to the Mass HIway as required to prevent impermissible uses of the Mass HIway.

In addition, under the regulations (101 CMR 20.07) the opt-in opt-out mechanism for the Mass HIway ensures that each patient receives written notice describing how a Provider Organization uses HIway-Sponsored Services, and also provides a mechanism by which patients can opt-out of participating in these services.

### 10.3. Q: How can stakeholders keep up to date regarding the Mass HIway Regulations and forthcoming updates from the Mass HIway?

**A:** The best way to stay informed on the regulations and issues related to the Mass HIway is to sign up for the Mass HIway newsletter at [www.masshiway.net](http://www.masshiway.net). In addition, meetings of the state's [HIT Council](#) often discuss the Mass HIway, and are open to the public.

Visit [www.masshiway.net](http://www.masshiway.net) - Email [MassHIway@state.ma.us](mailto:MassHIway@state.ma.us)