

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

POLICIES AND PROCEDURES

P&P 01: Disclosure of Protected Health Information to Health Information Organizations

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Definition:

1. The Kansas Health Information and Technology Act (KHITA) defines a health information organization (HIO) as any entity operating in the state which (1) maintains the technical infrastructure for the electronic movement of health information among covered entities; and (2) promulgates and enforces policies governing covered entities' participation in such health information exchange." The determination whether an organization constitutes an HIO is based on the functions and operations of such organization, as opposed to whether the organization self-identifies as an HIO.
2. The electronic movement of health information within a single covered entity, a single affiliated covered entity (as defined by HIPAA¹), or a single organized health care arrangement (as defined by HIPAA²) does *not* constitute health information exchange, regardless of the manner in which such electronic movement is accomplished. An entity that engages in such internal transmissions is not an HIO and is not subject to regulation by KDHE.
3. Electronic requests for or transmissions of a specific individual's protected health

¹ An affiliated covered entity is comprised of legally separate health care providers (or health plans or clearinghouses) under common ownership or control that formally elect to comply with the HIPAA Privacy Rule through common policies, procedures, and practices (i.e., develop and disseminate one notice of privacy practices, comply with one set of policies and procedures, appoint one privacy officer, administer common training program). As used herein, common ownership is defined as an ownership or equity interest of Five Percent (5%) or more; and common control exists if an entity has the power, directly or indirectly, to significantly influence or direct the actions or policies of another entity.

² An *organized health care arrangement* is either:

1. a clinically integrated care setting in which individuals typically receive health care from more than one health care provider; or
2. an organized system of health care in which two or more covered entities hold themselves out to the public as participating in a joint arrangement and jointly participate in at least one of the following:
 - a) utilization review, in which health care decisions by participating covered entities are reviewed by other participating covered entities or by a third party on their behalf;
 - b) quality assessment and improvement activities, in which treatment provided by participating covered entities is assessed by other participating covered entities or by a third party on their behalf; or
 - c) payment activities, if the financial risk for delivering health care is shared, in part or in whole, by participating covered entities through the joint arrangement, and if protected health information created or received by a covered entity is reviewed by other participating covered entities or by a third party on their behalf for the purpose of administering the sharing of financial risk.

information made by facsimile, e-mail communication, or electronic data interchange from one covered entity to another specifically identified covered entity do *not* constitute health information exchange. An entity that solely engages in or facilitates such entity-to-entity requests and transmissions is not an HIO and is not subject to regulation by the Kansas Department of Health and Environment (KDHE).

4. Unrelated covered entities' use of a common electronic database or data repository does *not* constitute health information exchange if the participants cannot electronically query or retrieve individually identifiable protected health information from the electronic database or repository. An entity that engages in or facilitates the use of such a database or data repository is not an HIO and is not subject to regulation by KDHE.

Policy:

1. A covered entity may not disclose an individual's protected health information to an HIO unless (a) the covered entity obtains from the individual (or his/her personal representative) a HIPAA-compliant authorization for such disclosure; or (b) the HIO to which the disclosure is made (i) has been designated as an approved HIO by KDHE, and (ii) is a party to a proper participation agreement with the covered entity governing the terms of such disclosure.
2. A covered entity that discloses an individual's protected health information to an entity designated by KDHE as an approved HIO pursuant to the terms of a proper participation agreement with that approved HIO is not required to obtain an authorization from the individual (or his/her personal representative) and is immune from any liability arising out of such disclosure pursuant to KHITA.
3. A covered entity that discloses an individual's protected health information to an HIO that has not been designated by KDHE as an approved HIO must obtain a HIPAA-compliant authorization from that individual (or his/her personal representative) with respect to that disclosure and shall not enjoy any immunity under KHITA with respect to such disclosure.
4. KDHE is charged with establishing "standards for approval and operation of statewide and regional health information organizations operating in the state as approved HIOs..." Those standards are specified in KDHE P&P 09, *Approved HIO Business Operations*.