

ARTC Session 3: Stability of Exchange Activities Under the Common Agreement

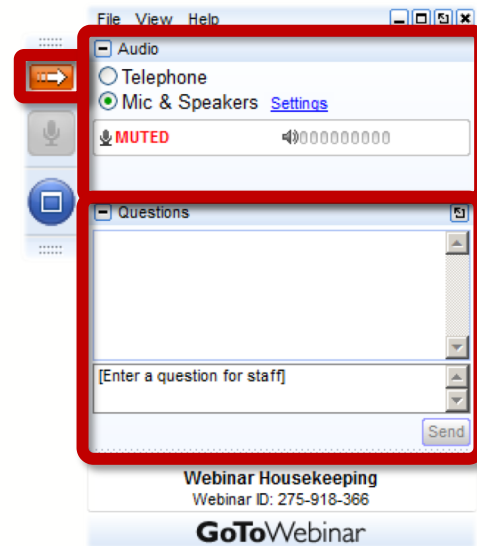
3/4/2020



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This project is supported by the Office of the National Coordinator for Health Information Technology (ONC) of the U.S. Department of Health and Human Services (HHS) under 90AX0026/01-00 Trusted Exchange Framework and Common Agreement (TEFCA) Recognized Coordinating Entity (RCE) Cooperative Agreement. This information or content and conclusions are those of the author and should not be construed as the official position or policy of, nor should any endorsements be inferred by ONC, HHS or the U.S. Government.

How To Participate Today



Your Participation

Open and close your control panel

Join audio:

- Choose "Mic & Speakers" to use VoIP
- Choose "Telephone" and dial using the information provided

Submit questions and comments via the Questions panel

Note: Today's presentation is being recorded and will be provided

Problems or Questions? Contact the RCE Team at:

rce@sequoiaproject.org

Agenda

- Welcome
- Purpose
 - 2/18 and 2/19: Operation of Exchange Activities (Part 1)
 - Allocation of liability
 - QHIN confidential business information
 - 2/26: Operation of Exchange Activities (Part 2)
 - Duty to cooperate
 - Dispute resolution process
 - **3/4: Preserving the Stability of Exchange Activities**
 - 3/16: Governance of Exchange Activities

Meet the RCE Team



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CEO
The Sequoia Project



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Steve Gravely
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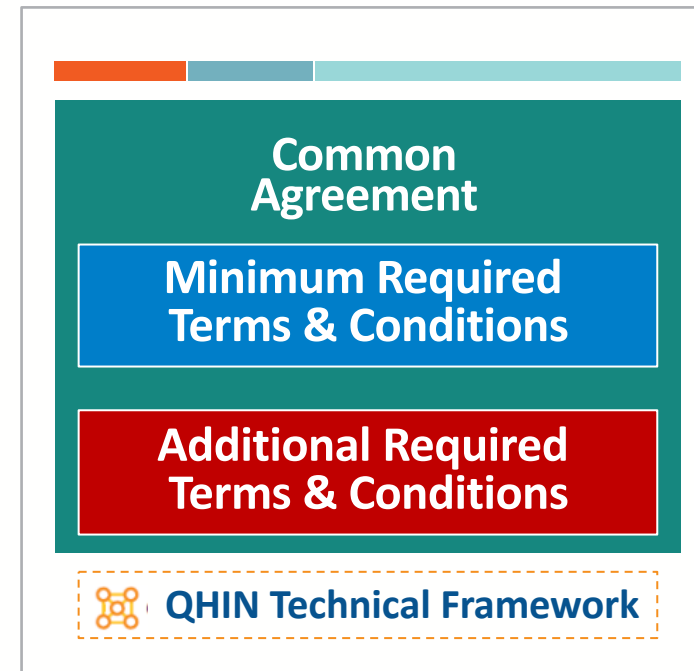
Chantal Worzala
Principal, Alazro
Consulting

What is The Common Agreement?

The **Common Agreement** will provide the governance necessary to scale a functioning system of connected HINs that will grow over time to meet the demands of individuals, clinicians, and payers.

The Common Agreement will be a legal document that QHINs sign. Some provisions of the Common Agreement will flow down to other entities (including providers) via contracts.

Stakeholders will be able to comment on the draft Common Agreement.



DRAFT Minimum Required Terms and Conditions (MRTCs)

- Definitions
- Initial application, onboarding, designation and operation of QHINs
- Data Quality and Minimum Necessary
- Transparency (e.g. agreements and fee schedules, disclosures)
- Cooperation and Non-Discrimination
- Privacy, Security and Patient Safety
- Participant Minimum Obligations
- Participant Member Minimum Obligations
- Individual Rights and Obligations, including “Meaningful Choice”

ONC to revise based upon public comment and input from RCE

DRAFT Additional Required Terms and Conditions (ARTCs)

- Additional necessary terms for an effective, operational data sharing agreement
- Generally applies to QHINs with some flow-down provisions
- May not conflict with MRTCs

RCE to develop for approval by ONC and release for public comment

ARTC Framework

Categories of important functions that are not addressed by the MRTCs

- Operation of the exchange activities under the Common Agreement
- Stability of the QHIN network
- Governance of the exchange activities under the Common Agreement
- *Contract Administration*



**ARTC – Preserving the
Stability of Exchange
Activities Under the
Common Agreement**

Stability of Exchange Activities Under the Common Agreement

- Exchange activities under the Common Agreement will support the delivery of clinical services, payment activities and other vital functions
- Stability of these exchange activities is essential
- The ecosystem is complex with many different types of organizations seeking to participate in a wide array of exchange activities
- All aspects of the Common Agreement, Standard Operation Procedures and QTF are intended to create a stable community for those who are exchanging EHI under the Common Agreement
- Compliance with these requirements is mandatory and non-compliance must result in will result in corrective action or possible termination of participation
- The RCE cannot impose monetary penalties, like fines, so the consequences for non-compliance relate to participation in the network

Proposed ARTC: Common Agreement Term

General Principle: QHINs are encouraged to continue exchanging information under the Common Agreement so there will not be a finite endpoint

- The more parties exchanging information under the Common Agreement the more value that the exchange network will have
- Once an organization becomes a QHIN, it will continue in the network until it withdraws or has its participation terminated by the RCE
- This does not flow down to a QHIN's Participants or their Participant Members, those organizations are free to establish whatever terms they agree upon

Proposed ARTC: Suspension by RCE

General Principle: Situations may arise in which the ability to exchange information under the Common Agreement must be suspended by the RCE

Suspension by the RCE may be based on 3 situations:

- Failure to pay applicable fees - The type and amount of fees will be developed with input from the Common Agreement Work Group
- Material breach of the Common Agreement by a QHIN that is not cured within 15 calendar days of being notified of the breach (QHIN and RCE may mutually agree to a longer period)
- Threat Condition - Substantial likelihood that acts or omissions by a QHIN or a QHIN's Participants/Participant Members creates an immediate threat or will cause irreparable harm to the RCE, another QHIN or its Participants/Participant Members
 - RCE may suspend a Participant/Participant Member instead of the QHIN if the Threat Condition is limited to a Participant/Participant Member

Proposed ARTC: Suspension by RCE

- Notice of suspension
 - RCE will make a reasonable effort to provide advance notice of any suspension
 - However, RCE can suspend without notice if it determines that the safety or security of any individual is threatened or the privacy or security of any EHI or Confidential Information is threatened
 - RCE can suspend with 10 calendar days advance notice if the RCE is threatened
- Post-Suspension: RCE will work collaboratively with a QHIN to resolve the issues that resulted in the suspension
- Effect of Suspension: If a QHIN, or its Participant/Participant Members, are suspended they must still comply with all other applicable provisions of the Common Agreement

Proposed ARTC: Suspension by QHIN

General Principle: QHINs may selectively suspend exchange with other QHINs in limited circumstances

- QHINs are required to exchange with all other QHINs except in limited circumstances
- QHINs will be permitted to suspend exchange activities with another QHIN if it has “reasonable and legitimate” concerns related to the privacy and security of information exchanged with another QHIN
 - Must develop criteria to indicate what would be a “reasonable and legitimate” concern
 - Based on facts, not conjecture or rumor
 - Must indicate that a QHIN’s EHI is at risk if it is exchanged
 - Details will be included in a Standard Operating Procedure
- If a QHIN suspends exchange with another QHIN, it must notify the RCE promptly (immediately?) and provide specific information for the basis of its decision
- Suspension may only last for 30 calendar days
- If suspension lasts beyond 30 calendar days, the QHIN must initiate the Dispute Resolution process to resolve the concerns that led to the suspension

Proposed ARTC: Termination by RCE

General Principle: RCE may terminate participation in exchange activities under the Common Agreement in limited situations

- The RCE may NOT terminate “without cause”
- RCE may terminate for a material breach if QHIN fails to cure within 30 calendar days after notice of the breach
 - If QHIN is working diligently to cure, RCE must provide QHIN an additional 30 calendar days
- RCE may terminate immediately if the breach is not capable of remedy
- RCE reserves the right to terminate if there is no longer availability of federal funding and it is determined by the awarding office that continued funding of the award is not in the best interests of the Government

Proposed ARTC: Termination by RCE

- **Effect of termination**
 - RCE shall immediately remove applicable QHIN and its Participants/Participant Members from QHIN Directory and all other lists that the RCE maintains
 - QHIN may no longer represent itself as a QHIN and will not receive any refunds or fees due to any event of termination
 - QHIN must remove references to being a QHIN from all electronic media and cease use of all materials that identify it as a QHIN
 - QHIN must attest to RCE within 20 business days that it has done this
- **Post-termination use of EHI**
 - Restrictions on use apply, cannot use EHI for any purpose not directly related to its role as a QHIN
 - Participants/Participant Members may keep using EHI if it has been incorporated into their EMRs or other systems

Proposed ARTC: Termination by QHIN

General Principle: QHINs have the ability to voluntarily terminate its participation in the exchange activities under the Common Agreement

- QHINs may terminate “without cause” upon 90 calendar days written notice to the RCE
- QHINs may terminate “for cause” if the RCE commits a material breach and fails to cure within 30 calendar days
 - If RCE is working diligently to cure, the QHIN must provide the RCE with an additional 30 calendar days
- A QHIN and the RCE may mutually agree to terminate this agreement at any time, subject to the terms of the Common Agreement

Next Steps

- Public stakeholder feedback session regarding draft ARTCs
 - 3/16: Governance of Exchange Activities
- Public stakeholder feedback session: QHIN Technical Framework (QTF) Draft 2 – 3/18
- Common Agreement Work Group - Apr-Jul
- Public stakeholder feedback session: Revised ARTCs – Jun / Jul
- Continued stakeholder engagement (targeted stakeholder calls, monthly public calls)
- Common Agreement Draft 1 and QTF Draft 2 published for public comment



Get Engaged!

For more information:
rce.sequoiaproject.org