



**Electronic  
Healthcare Network  
Accreditation  
Commission**

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October 21, 2021

Ms. Marianne Yeager, CEO  
The Sequoia Project  
8300 Boone Blvd.  
Suite 500  
Vienna, Virginia 22182  
<https://rce.sequoiaproject.org/common-agreement-elements-feedback-form/>

**SUBJECT:**

Response to Request for Comment – Elements of the Common Agreement

Dear Ms. Yeager:

The Electronic Healthcare Network Accreditation Commission (EHNAC) applauds the Sequoia Project for its ongoing leadership to drive the implementation of Interoperability in an open, transparent, and communicative manner as has been shown with the recent release of the latest Elements of the Common Agreement. Our industry needs leaders such as yourself who are familiar with healthcare data exchange, understand the importance of making this data available to patients and clinicians when they need it, yet recognize the importance of maintaining the privacy and security integrity of that data.

Founded in 1995, EHNAC is an independent, federally recognized, standards development organization and tax-exempt 501 (c) (6) non-profit accrediting body designed to improve transactional quality, operational efficiency and data security in healthcare. EHNAC's accreditation programs also support industry-adopted standards, thus allowing for a more seamless information exchange between participants in health information networks.

EHNAC has 20+ healthcare stakeholder-specific programs available across the industry. These programs include ones that accredit Health Information Exchanges (HIEs), Health Information Service Providers (HISPs), and Electronic Healthcare Networks (EHNs). EHNAC also certifies Electronic Prescription of Controlled Substances (EPCS) programs for vendors. Newer EHNAC programs specifically address the interoperable exchange of data including a jointly administered program with HITRUST known as the Trusted Network Accreditation Program (TNAP). TNAP aligns with the draft ONC Trusted Exchange Framework and Common Agreement (TEFCA) requirements as well as the Trusted Dynamic Registration and Authentication Accreditation Program (TDRAAP), offered by EHNAC and UDAP.org. These programs are designed to facilitate the endpoint trust for industry interoperability and include non-HIPAA covered entities as well.

EHNAC serves in numerous ways to promote the industry's adoption of interoperable health care data exchange as defined under the 21<sup>st</sup> Century Cures regulations. This includes participating on the Office of the National Coordinator's FAST Executive Committee and co-leading the respective Testing and Certification Tiger Team; serving on the Board of the Sequoia Project/Recognized Coordinating Entity, co-chairing the Interoperability Matters Leadership Council and participating on the HHS 405(d) Cybersecurity Information Sharing Act (CISA) and the Health Care Sector Coordinating Council (HSCC).

The HSCC effort involves a public/private partnership and collaboration to align industry awareness and preparedness facilitation in response to the exponential ransomware and cyber security attacks impacting our world today. Further alignment and participation via ongoing feedback during policy making processes and other avenues occur with NIST, CMS, ONC, OCR and others regarding implementation of best practices, standards and other industry guidance.

In order for the nation to achieve true “interoperability” of health data, EHNAC believes that healthcare organizations must be able to “trust” each other to appropriately share patient/individual data. **The encouragement and/or requirement for each participant within the healthcare ecosystem to gain an independent third-party privacy/security/cybersecurity accreditation and/or certification is one proven method and trust framework to “raise the bar” with respect to the level of stakeholder-trust across the industry.** Through participation in a rigorous accreditation program, our candidates receive multiple and specific reports to “share” their status and demonstrate to their partners that they can be “trusted” from a privacy/security and cyber-security perspective in addition to demonstrating they can provide operational/business stakeholder specific criteria in accordance with their program. By completing this independent review process, organizations also improve their cyber-readiness and preparedness planning to better handle cybersecurity incidents i.e., ransomware etc.and/or breach issues when they occur.

This level of independent review for all QHIN’s provides the necessary independent assessment needed to assure the appropriate level of review necessary to assure stakeholder-trust from all of the actors either exchanging data or accessing information such as patients through portals, smartphones or other electronic means. Additionally, by having an independent third-party review for QHIN’s, they will be best positioned to also be able to obtain cyber insurance from a carrier. Many insurance carriers are requiring independent third-party review before they will consider underwriting cyber insurance policies due to the increased number and size of claims due to the exponential increase in cyber attacks in the healthcare ecosystem. This is another key rationale for requiring an independent third-party review and to assure compliance and alignment with TEFCA requirements.

Recommendations are not yet provided for “flow down” participants as each may vary significantly and it is suggested the most appropriate “level” of privacy/security trust should be set with input from the QHINs themselves. EHNAC is available to assist in these recommendations when timing is impending.

While EHNAC is appreciative of the “go-forward speed” with which the Elements of the Common Agreement have been processed along with other more broadly based interoperability related initiatives (ONC FAST, HL7 work; FHIR; DaVinci; Connect-a-thons, the promotion of Unified Data Access Profiles (UDAP), the Industry Glide Path for Dynamic Registration and Authentication and others), there is a concern that overall coordination could be improved upon.

In summary, there are currently many public and private stakeholders operating in somewhat of a silo state (as there is not one entity convening all of the stakeholders to create a unified, integrated and agreed upon common roadmap for overall implementation). The various initiatives noted above have shown that FHIR Use Cases and standards have been prepared and will allow for the secure, efficient and scalable adoption to reach interoperability. This work can be leveraged today. At present the need is for a coordinated implementation effort in order to take advantage of this work as standards will continue to evolve.

EHNAC urges the RCE to move forward in its planning, but also to promote a coordinated approach to implement voluntary requirements and assure a successful implementation, rather than to accelerate the timeline. The infrastructure, policies, and agreed upon standards need to be in place to capture and transmit the data. Lastly, and most importantly, it has to work for all stakeholders, from the individual patient to the clinician, the payers and the business associates along the way.

Recent recommendations to NCVHS are repeated below as core to the success of the implementation of Interoperability:

- A. Continued development and promotion of standards especially in the area of the use of new technology, with emphasis on the emerging FHIR standards.
- B. Promoting trust through the encouragement and/or requirement of accreditation/certification will build a greater belief in the reliability of all actors across the healthcare spectrum that basic privacy, security and cyber security can be met.
- C. Continued work to assure regulations and authoritative requirements are integrated and consistent further promotes ease of adoption of such standards.

Overall EHNAC supports the requirement for third party certification/accreditation of a recognized cybersecurity framework and related security assessments for QHINs, and all other flow-down participants (as appropriate) because this will promote industry wide third-party stakeholder, clinician and consumer trust. Should an unfortunate cyber-attack or breach to data occur, the entire facilitation of interoperability may be impeded. Once the trust in a third-party relationship is destroyed, it may never be restored.

Specifically, regarding the current draft language, EHNAC suggests the following revisions for consideration (see red font language):

**Regarding # 11. (Page 9) entitled “Privacy and Security” –**

- i. EHNAC applauds the RCE for “raising the bar” to required that non-HIPAA entities protect TEFCA Information to the same level as those subject to HIPAA.
- ii. EHNAC suggests the following revisions (changes in red font) to the wording in the 2cd paragraph:
  1. “QHINs would be expected to meet and maintain third-party certification by a formal Standards Development Organization such as but not limited to EHNAC or HITRUST to an industry-recognized cybersecurity framework an annual security assessment and proven compliance with the Elements of the Common Agreement.”
- iii. Regarding the “flow down contract language: it is suggested that a “deeming provision” be added by using third party independent accreditation/certification as a way to allow proven standards can be met.
- iv. Regarding the CyberSecurity Council – It is suggested that the membership be expanded to include independent members (outside of the QHINs) to assure that varying perspectives are provided, and that neutral feedback and arbitrators of issues are in place. The RCE may consider representation from other industry stakeholders such as “Participants”; “Clinicians”; “Consumers”; Standards Development Organizations and others to assure a non-biased application of policy governance is in place.

EHNAC appreciates the opportunity to provide comment on this important initiative. We stand ready to continue the public/private promotion of Interoperability across our healthcare industry.

Most respectfully submitted,

A handwritten signature in cursive script that reads "Lee Barrett".

Lee Barrett  
Executive Director and CEO

Cc:  
EHNAC Commission