

The Information Sharing and HINP Agreement Walkthrough - System Coordinated Access Program

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Background

The System Coordinated Access Program, overseen by the Centre for Family Medicine eHealth Centre of Excellence (Centre), is the Health Information Network Provider for the System Coordinated Access (SCA) Network providing governance over the information systems and information technology services supplied to all participants.

The System Coordinated Access Program was originally initiated to support the development and adoption of electronic referral in the Waterloo Wellington region. In the absence of any one technical solution that could facilitate true end-to-end eReferral (e.g., from one physician EMR to another, or to a Hospital Information System), the SCA Program undertook an innovative procurement process to find a vendor (or group of vendors) who could develop a technological solution to facilitate this. The successful respondent was a consortium led by Think Research, which included CognisantMD and the Centre for Effective Practice. CognisantMD's Ocean eReferral platform and Think's EntryPoint platform form the basis of the eReferral technology.

Given the success of the Proof of Concept in the Waterloo Wellington LHIN, the Ontario Government made an investment in the August 2017 Budget to spread electronic referral to other parts of the province. Specifically, funding was advanced to the System Coordinated Access Program to support five additional LHINs to implement electronic referral using the Ocean eReferral platform.

The SCA Program is responsible for the integration of vendor solutions that make up an ecosystem referred to as the SCA Network. The SCA Network is an electronic web-based referral management and appointment-booking platform consisting of a connected network of technology solutions and applications supporting electronic referral and improved access to services in Ontario. Each vendor within the SCA Network is responsible for the operation of their solution.

Signing the Agreement

The HINP Agreement has been constructed to allow for the continual integration of service providers (vendors) as the System Coordinated Access (SCA) Program Network evolves. At any given time, a participant can view a list of vendors who are participating in the SCA Network on the SCA website <http://ehealthce.ca/SCA.htm>.

The HINP Agreement allows for Health Information Custodian (HIC) participants as described in Schedule A and Non-Health Information Custodian (NON-HIC) participants, in the form of community service providers as described in Schedule A(1), to be participants of the SCA Program.

Your local deployment team has provided you with the HINP Agreement. Please sign the agreement appropriate to your organization and return the signed copy to your deployment team lead as identified at the end of this document.

Article 1 – Interpretation

1.1 Definitions

This section explains various terms used within in the agreement.

1.5 List of Schedules

Rather than be included in the agreement itself, detailed information that may be subject to change over time is typically included in a schedule. Article 13 sets out how schedules can be updated or amended in a relatively simple and expeditious way. It is much easier to amend a schedule than it is to amend the agreement. In anticipation of the HINP Agreement being made available online, some of the ‘operational’ components of this agreement have been removed from the agreement and can be found on the SCA website <http://ehealthce.ca/SCA.htm>

Article 2 – Purpose of the Agreement

The objective of this document is to provide an overview of the content of the agreement between the Health Information Network Provider (HINP) and organizations participating in the SCA Program. This document will walk through the articles in the order that they appear in the agreement.

The agreement is solely regarding privacy. The ultimate purpose is to ensure that everyone is aware of their responsibilities under the Personal Health Information Protection Act (PHIPA) to protect the privacy of personal health information (PHI) as it relates to participating in the SCA Program and to understand the responsibilities of the Centre acting as the HINP for the SCA Program.

Article 3 – Statutory Compliance & Roles

Article 3 establishes rules of compliance within the roles of the HIC, NON-HIC, HINP and Agent under the terms of this agreement.

Article 4 – Representations & Warranties

Each organization is required to have its own privacy policies in place. Since this is a requirement for organizations that deal with Personal Health Information (PHI), your organization likely already has them in place. The SCA Program has a standardized Privacy Guide, which can be found on the SCA website <http://ehealthce.ca/SCA.htm>.

The guide explains your responsibilities under PHIPA and what to do in the event of a privacy or security incident. Participating organizations are encouraged to familiarize themselves with this guide and in the event that they do not have formalized policies, may adopt it as part of their internal privacy framework.

Article 5 – Obligations & Rights of the Participants

Article 5 explains the participants' obligation in obtaining consent from the client prior to making an electronic referral (eReferral). This includes obtaining consent to communicate with the client via email during the eReferral process. It is the responsibility of the participant to ensure the accuracy of client data to the best of their ability.

Access to solutions within the SCA Network is provided to appropriate individuals who are bound by specific protocols established to protect the personal information and personal health information of the participants' clients. Each participant will be expected to have an individual in place who is responsible for protecting their client data and ensuring your organization aligns with the privacy and security protocols as identified in the agreement.

Article 6 – Authorized Users

Participating organizations are responsible for managing who in their organization is entitled to access the SCA Network. Participating organizations need to familiarize themselves with the access protocol established in this agreement. Each authorized user must agree to a 'Participant License Agreement' or 'User Terms and Conditions' found on the solution's log in page.

Article 7 – Safeguards

This article outlines standard precautions that participating organizations will take to protect client information, including not downloading PHI onto unsecure devices.

Article 8 – Client Data

Article 8 is standard language related to how organizations might deal with access and correction requests from clients. This includes, who has ownership of client data within the SCA Network, what to do in the event of a suspected or real breach, how to address client complaints and what participating organizations are permitted to do with client data they are exposed to through the SCA Network. As with any solution, participants who are permitted access to clients' data are expected to use good professional judgment in the use of that data.

Article 9 – Systems & Administration

Article 9 sets out responsibilities for participants to maintain their internal system infrastructure and the responsibility to have a designated privacy officer, with defined privacy officer roles and responsibilities.

Article 10 and 11 – Statues, Rights & Obligations of the Centre as a HINP and Agent and Protection of Client Data by the Centre as a HINP

These articles set out, in detail the responsibilities of the Health Information Network Provider (HINP) as required by PHIPA. The HINP is required to maintain the security of the network and to take a lead role

in the privacy program. The SCA Program, run through the Centre, acts as the HINP for the SCA Network. On behalf of all participating organizations, the SCA Program will ensure that all vendors participating in the SCA Network meet or exceed appropriate data and information security standards.

The HINP is also required to maintain policies and protocols on behalf of the participating organizations that outline how we will respond to certain situations and meet the requirements of PHIPA, such as:

- Responding to a privacy or security incident or breach
- Having a plain language description of its services and safeguards available to the public and participating organizations
- Ongoing assessments of the security and the system to ensure vendors participating in the SCA Network have a business resumption and contingency plan

The System Coordinated Access Privacy and Security Working Group will support and direct the SCA Program in its role as the HINP.

Article 12 – Term & Termination

Article 12 sets out the length of time that the agreement will continue, how the agreement may be terminated earlier, including by whom and with how much notice to the other parties. Because this initiative is dependent on funding from the Ministry of Health and Long-Term Care, section 12.5.3 contemplates the situation in which funding is no longer available to support the SCA Program.

Article 14 and 15 – Liability, Indemnification & Insurance

These are standard clauses in legal agreements. They indemnify each party and require that each participating organization have standard liability insurance.

As part of a thorough review, the SCA Program had discussions with several carriers and lawyers to help determine the appropriate insurance requirements. The request for \$5 million General Commercial Liability Policy coverage is the current industry standard that provides sufficient protection against the financial burden suffered through class action lawsuits in today's environment. Organizations such as Ontario Medical Association (OMA) provide a basic protection package for an annual rate of approximately \$540.

Link has been provided for your perusal: <http://oma.hubinternational.com/purchase-online/>

The insurance clause further stipulates that the participants are responsible for determining *other coverage advisable for their own protection*. We recommend that Participants who are looking for assistance in determining what other insurance coverage they should have in place, review the indemnity section of the HINP. This section includes a list of situations (privacy breach, errors/omissions) that they should discuss with their carrier to confirm how those elements are handled and ensure they are adequately protected.

As outlined in the HINP agreement, the SCA Program has the right to request a copy of a Participant's insurance certificate at any time. Participants should be made aware that they are required to provide this documentation upon request.

Note: There is an amendment to the indemnity clause specific for the LHINs. The Schedule A – Form of Participation Agreement – HIC (LHIN) replaces the standard Schedule A – Form of Participation Agreement – HIC when presenting this agreement to the LHIN.

Article 16 – Dispute Resolution

The Dispute Resolution article explains the process established to resolve a dispute between parties of this agreement.

Article 17 – Notice

This section explains the process established to deploy a demand, notice, direction or other communication to and between parties of this agreement.

Article 18 – General

Here you will find the following legal miscellaneous tidbits that did not 'fit' into any of the other articles:

- Severability
- Further Assurances
- Force Majeure
- Consent to Breach not Waiver
- Changes that Affect the Agreement
- Survival
- Counterparts
- Assignment

Each one has its own instruction. Participating organizations should familiarize themselves with each.

Should you require further clarity regarding any part of this agreement, please contact the deployment team privacy coordinator.