



March 25, 2022

John Ohanian
Chief Data Officer
Director, Center for Data Insights and Innovation
California Health and Human Services Agency (CalHHS)

Re: Data Exchange Framework (DxF) Draft April Legislative Update

Dear John:

For the past seven months Manifest MedEx (MX), a statewide nonprofit health information exchange organization (HIO), has been privileged to serve on the DxF Stakeholder Advisory Group as well as the Subcommittee focused on the Data Sharing Agreement (DSA). We recognize CalHHS' draft legislative update to be a summary of materials presented at both forums as *options for discussion* versus *key proposed decisions*. Respectfully, the draft lacks the specificity and direction the Legislature and stakeholders need at this critical juncture.

Per AB 133, thirteen weeks remain before CalHHS must establish the DxF, DSA, and accompanying policies and procedures (P&Ps). The statute calls for a legislative update as follows (emphases added):

No later than April 1, 2022, the California Health and Human Services Agency shall submit an update, *including written recommendations*, to the Legislature *based on input from the stakeholder advisory group*...

MX is not alone among stakeholders who—despite being steeped in the advisory process—have struggled to discern clear *recommendations* from CalHHS' draft update. The Legislature will encounter even greater difficulty understanding how this process is on track to deliver a statewide Framework that accomplishes the goals of AB 133. The draft does not explicitly lay out requirements and resources for participants to either satisfy or rely on the Framework's mandate for their data exchange needs.

We are aware firsthand that much of the unfinished work to develop the DxF/DSA is both substantive and complex; that the advisory process has achieved consensus on relatively few items; and that unanimity is unlikely on many decision points. These issues are both inevitable and healthy markers of any policymaking effort that weighs important trade-offs. However, they also underscore CalHHS' imperative to—after considering stakeholders' data sharing needs, insights, and tensions among valid priorities and concerns—present the Legislature with (1) *a list of proposed strategic decisions* for the DxF/DSA, (2) *arguments for why* this list holds the most promise against the various alternatives, and (3) *a request for funding* to fully realize this promise.

MX has consistently urged CalHHS to adopt a concrete set of actions, throughout the Advisory Group and Subcommittee meetings and in our two previous letter submissions—the [first](#) proposing state-federal investments to address major gaps in California’s data sharing infrastructure, and the [second](#) outlining implementation questions that the DSA must resolve. We reiterate these recommendations below. We view these as essential components for an effective DxF/DSA strategy and ask that CalHHS incorporate them as proposed decisions in its revised legislative update.

1. Invest state budget funds for data sharing incentives and infrastructure of qualified HIOs

CalHHS and stakeholders agree that many health care providers—particularly those serving the most vulnerable Californians—lack the technical capacity to directly recognize, review, and respond to every request for patient records once the DxF/DSA is fully executed. These providers will need to entrust responsibility to a data intermediary equipped to share information on their behalf. Both providers and suitable intermediaries like HIOs will require financial resources to sustain this partnership.

The draft legislative update enumerates but does not commit to potential areas for public investment that were explored by the Advisory Group. The final version of the update will coincide with Spring Finance Letters and the approaching May Revision, making it appropriate timing for the Administration to plainly state its position on providing fiscal support for data sharing infrastructure.

The Governor and Legislature have received a [\\$95 million General Fund request](#) from a coalition of more than 20 provider organizations, health plans, and HIOs. The request would fund HIOs as qualified networks that providers can use to comply with and benefit from AB 133, and performance payments to motivate providers through this onboarding process. Because this proposal is supported by multiple members of the DxF Advisory Group, modeled on successes in other states, and designed to leverage enhanced federal funds, it wholly merits inclusion in CalHHS’ revised update to the Legislature.

2. Limit compliance choices to sharing data directly or via qualified intermediaries

Based on Advisory Group and Subcommittee discussions, we are confident CalHHS and stakeholders widely endorse the state’s role in establishing “processes, requirements and criteria” to qualify networks like HIOs that providers may use to comply with the DxF/DSA. But this qualified approach cannot coexist with unfettered ways of allowing other organizations to submit and respond to requests for data.

The statutory intent for the DxF to be “technology agnostic” should not be taken to mean *carte blanche*. Otherwise, it will fail the objective that immediately follows under AB 133 (emphases added):

...[E]nable and require real-time access to, or exchange of, health information among health care providers and payers through any health information exchange network, health information organization, or technology *that adheres to specified standards and policies.*

If the Framework leaves compatibility with qualified intermediaries as an *option* rather than *requirement* for data exchange, the designation of networks becomes functionally meaningless. A small practice choosing a qualified network will have no assurance that other providers will select methods that can reliably share with that network. This practice may end up both unable to retrieve other providers' records for its patients and overwhelmed with direct requests that bypass its chosen network.

At the most recent Subcommittee meeting, stakeholders inconclusively debated opinions on “*may*” versus “*must*” regarding qualified exchange methods. This makes it crucial for CalHHS to adopt an unambiguous stance in its final legislative update. To preserve the simplicity and universality of a qualified network approach, the DxF/DSA should stipulate that (1) such networks *must* have the capacity to share data with each other; and (2) health care entities can meet AB 133 requirements *only* by either joining qualified networks, or directly sharing data with/requesting data from these networks.

3. Clearly define data sharing requirements and how they will be enforced

Entities' obligations to both proactively send data (e.g., hospital event notifications and lab results) and respond to queries (e.g., ambulatory patient care summaries)—along with deadlines for compliance and consequences for non-compliance—should be treated as *foundational* to the DxF and included in the first tranche of P&Ps that CalHHS establishes by July 1, 2022. From Slide 39 of the draft update, it is not apparent that the Administration plans to expedite these requirements along the same timeline. Delaying their rollout will muddle DxF/DSA implementation and make enforcement impossible.

4. Fully align scope of required data sharing with federal policy

We are concerned about [draft sections of DSA language](#) and some Subcommittee discussions implying that the *requirement to respond* to data requests could be limited to a confusing *subset* of HIPAA treatment, payment, and operations (TPO) purposes. CalHHS' revised legislative update should disabuse stakeholders of this notion. Instead, requiring data sharing for *all* allowable TPO purposes fulfills the intent of AB 133 to firmly align with the direction of federal policy, including the Information Blocking rule and TEFCa. As stressed by the National Coordinator for Health Information Technology at the [most recent Advisory Group meeting](#), for the sake of providers' burden and benefits under AB 133, it is highly advisable *not* to impose data sharing restrictions that are more stringent than these federal frameworks.

5. Release the entire DSA draft to the Advisory Group as soon as possible

Together, the fundamental choices within 2, 3, and 4 raise the urgency for the Advisory Group to have ample opportunity to review and comment on a *complete* draft of the DSA and initial set of P&Ps before they are finalized. Slide 30 of the draft legislative update indicates a May 18 presentation date for these draft documents. This is too close to the July 1 deadline for stakeholders to provide thoughtful input and engage in meaningful discussion with CalHHS.

We believe the intent of the April legislative update requirement is to create both *accountability* and *opportunity* for the Administration to inform and guide the Legislature—not just through recapping the Advisory Group’s proceedings to date, but by charting a cogent path forward based on that progress. We are ready to further assist your team with making the most out of this reporting milestone.

Sincerely,



Felix Su
Director, Health Policy
Manifest MedEx