

May 5, 2022

The Honorable Dr. Mark Ghaly, MD, MPH
Secretary, California Health and Human Services Agency
1600 9th Street, Room 460
Sacramento, CA 95814

RE: Data Sharing Agreement

Dear Secretary Ghaly,

Thank you and your team for your leadership on implementing Assembly Bill 133, which among other programs, would establish a data sharing ecosystem where payers, providers, hospitals, and other participants will be required to share complete health and social service information to improve our health care delivery system. We are writing to offer comments to improve the recently released draft Data Sharing Agreement to ensure that it fulfills the requirements of the enacting legislation and more importantly, power the transformation needed to make the system truly worthy of our family and friends.

Blue Shield of California starts from the point of view that patients and consumers own their information, and the data sharing agreement must ensure that they have access to their complete longitudinal health history. While the draft agreement does require participants to adhere to federal law regarding information blocking, that still puts the onus on the patient to track down their health histories. We believe health plans – as the source of coverage for nearly every Californian – should be charged with providing their members with their longitudinal histories.

In addition to this, the draft Policy and Procedures (Document 6: Permitted, Required, and Prohibited Purposes), defines health care operations significantly more narrowly than HIPAA and the federal law (45 CFR Section 164.501.) The excluded provisions of health care operations are central to a health plans' ability to coordinate care, develop products and services to address chronic conditions, improve medical management, drive efficiencies in operations, provide a member with their longitudinal health history, and more. Beyond the limiting nature of the current definition in the Agreement, should Participants seek to exchange data consistent with federal law, the bias set forth in the agreement foists conflict in the contracting process. As history shows, that will ultimately create a hodgepodge of data exchange

completeness creating inequitable experiences for our patients. We respectfully request that reference to health care operations mirror that of HIPAA and federal law.

Next, the draft Agreement and supporting Policy and Procedures are inconsistent with the statutory requirements that are "...designed to enable and require real-time access to, or exchange of, health information among health care providers and payers..." On page 8 of the Agreement, there is a vague reference that states that "...each Participant shall make all reasonable efforts to accommodate the other Participant's schedule and reasonable operational concerns." This alludes to timeliness of data exchange, but it is vague and will end up in protracted contracting negotiations and legal fights. Adding language around acceptable response times and defining 'real-time' and its applicability will reduce confusion, codify expectations, and help institute timely, standardized data exchange amongst participants.

Blue Shield of California's experience heretofore is that there is a broad range of willingness in the hospital and provider community to support data exchange. The vagueness of the language will perpetuate the lack of consistency, rather than drive standardization and commonality of what specific data elements should be exchanged, by whom and on what timeframe. This has been our experience to date with the lack of clear state policy and it will be perpetuated by this provision.

Related is the lack of enforcement provisions. Our expectation is that the entire care continuum will readily comply with the agreement and AB 133, but given the history of the issue, we expect that actors in all sectors may not comply. The reasons for non-compliance will vary, but the law and the supporting policies should unequivocally create an environment of accountability. Namely, the requirements to share data pursuant to the agreement must be incorporated in payer contracts and compliance should be a condition of licensure for all participants.

In addition to clear accountability in the Agreement, we must make investments to support connectivity and compliance. For these reasons, we request that the data sharing agreement be amended to ensure enforceability and the state should appropriate funding in this budget cycle to support infrastructure needs.

Thank you for your attention to our concerns. The progress we've made in the past year on data exchange has been profound because of your leadership, our legislative leaders, and our Governor. We look forward to working with you to address these remaining issues and realizing the potential of AB 133.

Sincerely,

A handwritten signature in black ink, appearing to read 'AK', with a long horizontal flourish extending to the right.

Andrew Kiefer
Vice President, State Government Affairs