



June 1, 2022

John Ohanian
Chief Data Officer
Center for Data Insights and Innovation
California Health and Human Services Agency

Via email: CDII@chhs.ca.gov

Re: LHPC Comments on the Draft Data Exchange Framework

Dear Mr. Ohanian:

On behalf of the Local Health Plans of California (“LHPC”), enclosed and attached are comments regarding the draft Data Exchange Framework (“DxF”), Data Sharing Agreement (“DSA”), and Policies and Procedures (“P&Ps”). LHPC is the statewide trade association which represents the 16 local, not-for-profit Medi-Cal managed care plans that collectively cover over 8.5 million Californians. The local plans are supportive of the objectives of the DxF and the vision for improving data exchange in California, and we appreciate the work of the California Health and Human Services Agency (“CalHHS”), including the Center for Data Insights and Innovation (“CDII”), over the last year to convene a diverse set of health and human services stakeholders to develop the DxF, DSA, and P&Ps. There has been extensive engagement that has informed the development of these documents, and we commend CalHHS for this thoughtful process. Although the work for the DxF Stakeholder Advisory Group (“DxF SAG”) will culminate in completion of these documents and the Digital Identities Strategy, the DxF SAG should continue to play a critical role in the ongoing development of the requirements for data exchange (e.g., additional P&Ps) until the Stakeholder Advisory Group proposed as a part of the governance structure is formed. Below are the priority policy issues identified by local plans that we believe must be addressed in the final DxF. The attached Excel document includes detailed comments regarding the DSA and specific P&Ps. Thank you for considering our feedback and recommendations.

Authority for CalHHS Data Sharing Governance. As has been discussed in the DxF Stakeholder Advisory Group, the governance of the DxF is critical. We generally support the governance structure proposed in the DxF which, in addition to describing the role of CalHHS and CDII, stakeholder advisory groups, and subcommittees, indicates that CalHHS will introduce a legislative proposal next January to establish a Health Information Exchange Policy Board in 2023. In addition to seeking statutory authority to establish such a Policy Board, we believe it is necessary and appropriate for CalHHS to seek additional legislative authority to oversee and enforce the DSA. Although AB 133 includes broad language about implementation of the DSA, it is silent with respect to the authority of CalHHS to govern the DxF. The scope of CalHHS and CDII as envisioned in the DxF is broad, essentially creating a new regulatory entity. **We strongly recommend that in addition to a legislative proposal for a HIE Policy Board, the January**

Budget also propose to codify a governance structure that specifies the scope of authority of CalHHS and CDII to oversee and enforce the DSA. Without this, it is unclear that CalHHS and CDII has sufficient authority to monitor and enforce the DSA and P&Ps in the way described in these draft documents. **As such, we additionally recommend that components of the DSA and P&Ps related to monitoring, auditing, and oversight be removed until such authority is sought and approved by the Legislature.**

Policies & Procedure Development Prior to 2023. There are several critical P&Ps that are not yet developed and have not been shared with the DxF SAG for review, including the process for CalHHS to designate qualified HIOs and technical requirements for data exchange. Although we understand and appreciate that P&Ps are subject to change or that additional P&Ps may be added over time, these are core P&Ps that will steer data exchange, particularly because the DSA is a high-level agreement that does not included these critical details. **We recommend that CalHHS continue to convene the DxF SAG to prioritize additional P&Ps for development and finalization before any entities are required to execute the DSA in January 2023.** Additionally, as stated above, we recommend that P&Ps related to monitoring and enforcement be addressed after CalHHS has specific statutory authority, assuming the statute includes these functions within the scope of CalHHS' authority.

Breach Notification Requirements are Duplicative. There are already well-defined requirements under HIPAA and the HITECH Act regarding actions entities must take if a breach occurs, including notification requirements. In addition, there are extensive requirements in Medi-Cal managed care plan contracts with DHCS related to breach notification and reporting that align with the federal requirements. Including breach notification within the purview of CalHHS/CDII is duplicative and excessive. There are already clear rules related to breach notification which apply to the various entities that will be required to execute the DSA. **We recommend removing breach notification altogether from the P&Ps and instead reference compliance with existing federal or state rules related to breach notification.**

National Standards Must be Adhered To. Another issue that has been the focus of significant discussion in the DxF SAG is alignment with national standards or requirements. We appreciate that, overall, CalHHS has agreed that California should not deviate from national standards and the intent to ensure state rules are “harmonized” with federal rules. However, despite this stated intent, language in the Data Standards P&P provides flexibility for the DSA requirements to differ from federal requirements or national standards in order to “align with the needs of the Data Exchange Framework” and indicates that to the extent there are conflicts, the state Technology and Standards Guide would prevail. This language is problematic as there should not be any flexibility to establish different standards when national standards exist. This is distinctly different from the reference to gaps in national standards, where it may be appropriate for California to develop new standards. **We recommend that any language in the DSA or P&Ps that provides CalHHS discretion to deviate from national standards be removed.**

Participation by Counties and Governmental Entities is Critical. We continue to have concerns that county behavioral health, public health, and social services are optional participants. One of the guiding principles of the DxF is to “support whole person care.” Whole person care necessitates information about services provided by these entities, and many of the gaps and opportunities outlined in the DxF are regarding the exchange of behavioral health and social services data. However, under AB 133 these entities are not required to execute the DSA. Absent a clear plan to support the readiness of counties,

human services organizations, and other governmental entities, and a requirement that they execute the DSA, the vision of the DxF will not be realized. **We recommend CalHHS propose a requirement for county entities to execute the DSA by a specific date and outline a plan to support their readiness to exchange data.**

May Revision Proposals Laudable but a Significant Gap Remains. **Finally, we applaud the Administration for the proposals in the May Revision that will support implementation of the DxF.** These proposed investments, including \$50 million through CalHHS for TA and support to small provider groups and \$200 million through DHCS for providers to upgrade clinical infrastructure and enhance their data collection and sharing capabilities, will remove barriers to data exchange by ensuring providers have the tools needed to exchange data. However, although we support these proposed investments, the May Revision did not include funding to support HIE infrastructure development. Regional HIEs provide the infrastructure for meaningful and actionable data exchange. Additionally, there is enhanced federal matching funds to support their development and enhancement. **We urge the Administration to include funding in the Budget that is targeted on filling the important gap of HIE infrastructure improvements.**

Thank you again for your work to convene the DxF SAG and develop the DxF. We appreciate the opportunity to provide input and we look forward to further discussion.

Best,



Linnea Koopmans
CEO

Cc: Marko Mijic, Undersecretary, California Health and Human Services Agency