

June 2, 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 and Policy & Procedures Comments**

Dear Secretary Ghaly,

Thank you for the tremendous work the state is doing to advance data sharing to improve the delivery of health and human services. California, as you have pointed out, has an opportunity to be a national leader, leapfrogging what other states and the federal government has done to build a comprehensive data ecosystem that truly enables whole person care and enhanced well-being and quality of life for our fellow Californians.

Our comments on the Data Sharing Agreement (DSA) build off the letter we submitted on May 5, 2022. While we recognize the DSA must be finalized by July, we urge you to also finalize the subsequent Policy and Procedure documents. Much of the success of the DSA rests in the contracts between payers and providers, which necessitates that the details are finalized as soon as possible. Below is our detailed feedback:

1. Policy and Procedures Document #6, Permitted, Required and Prohibited Services: This document specifically limits data health plans can receive to a subset of allowable purposes under federal law. This would restrict the information that health plans currently can receive, limiting data necessary for critical functions such as premium rating for groups, medical review, fraud detection, and more. We respectfully request that the definition in the data sharing agreement mirror the federal definition of health care operations.
2. Timeliness of Data Exchange: On page 7, Section 11, Subsection (b) of the DSA, there is a requirement that Participants shall make all reasonable efforts to accommodate other Participant's schedules and operational concerns, while the enabling statute requires 'real-time' exchange. This ambiguity will undoubtedly create conflict between Participants and undermine the consistency of data exchanged across the state. We request inclusion of a new provision stating that Participants must exchange data in real-time and a new Policy & Procedure document be developed as soon as possible further defining the timelines for data exchange. For instance, hospital admission and discharge information should be shared within 24 hours and clinical information necessary for authorizations be transmitted within the timeframe that accommodates health plans statutory requirements.

3. Enforcement: There is no enforcement mechanism in the DSA or supporting documents. Absent any accountability, compliance will be inconsistent and there will be undue and unnecessary reliance on health plan contracting. We recommend the DSA specifically include enforcement with Participant regulators and be a condition of participation in Medi-Cal, Covered California, and CalPERS.
4. Patient Access: While the DSA requires compliance with the federal information blocking rules, it falls short in the creation of a longitudinal patient record. The DSA should expressly require health plans to create and make available complete patient histories for its members.
5. Privacy/Breaches: The efficacy of the data sharing ecosystem envisioned by the DSA depends on its credibility with the people it serves. We strongly value privacy and data protection, but the DSA and its supporting Policies and Procedures create a different regulatory structure than current state and federal law with thresholds that are impossible to meet. We recommend the DSA reference existing law without creating new and different standards.

Lastly, it is imperative that the outstanding Policy and Procedure documents get finalized in the next 90 days. This will minimize the inconsistency that will exist across the health care system. As a network health plan, we are constantly in contract negotiation, many of which will be in place after the DSA is implemented. Providing additional details on a shorter timeframe will substantially improve the quality and accessibility of data sharing tomorrow.

Thank you in advance for your consideration of these recommendations. We stand ready to meet to discuss how to make this policy a resounding success.

Sincerely,

A handwritten signature in black ink, appearing to read 'AK', with a stylized, cursive flourish extending from the end.

Andrew Kiefer  
Vice President, State Government Affairs