

**California Health & Human Services Agency
Center for Data Insights and Innovation
Data Exchange Framework Implementation Advisory Committee
Data Sharing Agreement Policies and Procedures Subcommittee
Meeting 2 Chat Log (10:00AM – 12:30PM PT, October 25, 2022)**

The following comments were made in the Zoom chat log by Subcommittee Members during the October 25th meeting:

10:14:05 From Nik Sethi to Everyone:

Definition of “Health and Social Services Information” is as follows:

“Health and Social Services Information” shall mean any and all information received, stored, processed, generated, used, transferred, disclosed, made accessible, or shared pursuant to this Agreement, including but not limited to: (a) Data Elements as set forth in the applicable Policy and Procedure; (b) information related to the provision of health care services, including but not limited to PHI; and (c) information related to the provision of social services. Health and Social Services Information may include PHI, PII, de-identified data (as defined in the HIPAA Regulations at 45 C.F.R. § 164.514), anonymized data, pseudonymized data, metadata, digital identities, and schema.

10:14:43 From Steven Lane to Everyone:

Once the USCDI+ (“USCDI Plus”) effort bears fruit, it is anticipated to define data classes and elements specific to Public Health (and CMS) beyond those data already included and defined in the core USCDI.

10:15:54 From Nik Sethi to Everyone:

Practices is defined as any act or omission.

10:21:03 From Elizabeth Steffen to Everyone:

Completely agree with Matthew Eisenberg's point

10:22:18 From Steven Lane to Everyone:

Also endorse Matt’s suggestion to identify and close gaps in the federal rules, and be prepared to modify our state guidance if/when the federal rules expand to cover gaps we have addressed.

10:30:09 From Deven McGraw to Everyone:

I see Helen's point - we have a data sharing requirement - which the federal info blocking rules had to establish - so focusing on what is permissible in terms of withholding or creating obstacles to info blocking - may get us further down the road. Question then is whether we just refer to the federal Info blocking safe harbors or create our own here.

10:31:04 From Elizabeth Steffen to Everyone:

@ Deven I would say to refer to the federal info blocking safe harbors

10:34:15 From Steven Lane to Everyone:

There are already CA state laws that provide additional exceptions to federal information blocking prohibitions; witness the recent SB1419.

10:35:11 From Steven Lane to Everyone:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1419

10:35:13 From Matthew Eisenberg to Everyone:

The Federal Regulations define harm as physical harm. I wonder if this definition applies to Social Service Information?

10:35:21 From Mark Savage to Everyone:

The information blocking requirements and examples arise to avoid numerous practices that have impeded sharing. One can either define in great detail what proper exchange is, or one can define in detail what are inappropriate practices in exchange. I think, either way, this P&P will need that level of detail to avoid repeating history.

10:37:54 From Deven McGraw to Everyone:

@Steve, I would think an exception based on meeting state law requirements would fit under the privacy safe harbor.

10:38:34 From Deven McGraw to Everyone:

@Steven (correcting typo)

10:39:04 From Steven Lane to Everyone:

ONC has a very helpful FAQ regarding the definition of Substantial Harm:
<https://www.healthit.gov/faq/which-patient-access-cases-does-preventing-harm-exception-recognize-substantial-harm>

10:50:14 From John Helvey to Everyone:

Louis Cretaro commented -I think the Child Welfare Programs would have disclosure issues to be considered as well - this brings up a good point...How do we know when the parent or guardian has had their rights removed and now sits in the hands of a ward of the court?

10:50:22 From Deven McGraw to Everyone:

@Lee, under the federal laws, the privacy safe harbor allow an entity to decline to share data where the patient has requested it be withheld. But the info blocking rules do not create a right for the individual to block information from being shared.

10:52:21 From Lee Tien (he/him) EFF to Everyone:

@Deven I was looking at the (b) sub exception in this document, which includes the individual requests in (b)(1) -- perhaps I'm misunderstanding?

10:52:36 From Steven Lane to Everyone:

Very important point @Deven. The rules allow a data holder to block data based on a patient's request, but does not require this.

10:53:26 From Steven Lane to Everyone:

This is important, as it is likely impossible to reliably block all access to data release in the setting of electronic data.

10:54:12 From Lee Tien (he/him) EFF to Everyone:

@steven, if the patient doesn't know about it, they won't be able to make the request, is my concern

10:54:23 From John Helvey to Everyone:

That sounds more appropriate Helen...

10:55:57 From Matthew Eisenberg to Everyone:

Again, perhaps this P&P should be AIMED at those actors within the DxF that are NOT covered by the Federal Information Blocking regulations?

10:56:21 From Elizabeth Steffen to Everyone:

@Matthew, I would agree

10:56:32 From John Helvey to Everyone:

@Matthew, I agree

10:57:57 From Morgan Staines, DHCS (he) to Everyone:

Matthew's suggestion makes sense to me, too

10:58:51 From Matthew Eisenberg to Everyone:

@Diana - Your point about Public Health Depts/Agencies that fall into the Provider Actor category under Federal Law is important and complex, particularly as we capture more social determinants of health data.

11:00:12 From Lee Tien (he/him) EFF to Everyone:

I will also add, as I regularly do, that the state IPA applies to state-level agencies but not local gov't so the rules are not standard within CA

11:01:14 From Matthew Eisenberg to Everyone:

This language seems entirely unnecessary.

11:03:32 From Lee Tien (he/him) EFF to Everyone:

+1

11:03:48 From Elizabeth Steffen to Everyone:

+1

11:03:53 From John Helvey to Everyone:

+1

11:05:20 From Deven McGraw to Everyone:

Agree Helen -

11:05:26 From Matthew Eisenberg to Everyone:

+1

11:05:34 From John Helvey to Everyone:

+1

11:06:01 From Deven McGraw to Everyone:

Feels like we could shorten this to be "follow applicable law" and to the extent you are following applicable law

11:06:17 From Elizabeth Steffen to Everyone:

Agree @Deven

11:06:28 From John Helvey to Everyone:

+1 Deven

11:09:22 From Matthew Eisenberg to Everyone:

In my mind/practice, the real, biggest challenges with Privacy come down to State Law regarding adolescent privacy and State and Federal Law regarding Mental & Behavioral Health/Substance Use Disorder care. I would now add information about reproductive health. These will continue to remain the biggest challenges to a CA State DxF.

11:09:34 From Lee Tien (he/him) EFF to Everyone:

agree with Matthew

11:09:46 From John Helvey to Everyone:

agree with Matthew

11:10:56 From Matthew Eisenberg to Everyone:

@Louis - Interesting point. I guess we could use patient by patient or person by person basis?

11:14:59 From Deven McGraw to Everyone:

One reason why it seems feasible to do federally is that HIPAA permits so much data sharing without the need to first obtain consent

11:20:18 From Matthew Eisenberg to Everyone:

This will be very difficult to actually operationalize? What time frame is specified? Will we revisit the request to opt-out of information sharing at each encounter/touch point?

11:20:19 From Steven Lane to Everyone:

It seems we need to move on to Monitoring and Auditing.

11:20:40 From Elizabeth Steffen to Everyone:

+1 @ Matthew

11:20:47 From Matthew Eisenberg to Everyone:

Agreed. This one need a redo and we can revisit?

11:21:57 From Matthew Eisenberg to Everyone:

I agree Helen!

11:21:58 From Elizabeth Steffen to Everyone:

Agree Helen

11:22:04 From Deven McGraw to Everyone:

+1

11:22:11 From Steven Lane to Everyone:

Glad to hear that the team is taking our feedback to heart and will come back with another draft. Thank you!

11:24:49 From John Helvey to Everyone:

Second that Leo.

11:25:01 From Steven Lane to Everyone:

Good question Leo!

11:25:17 From John Helvey to Everyone:

What does bi-directional access look like....

11:25:23 From Matthew Eisenberg to Everyone:

QHIOs should be able to provide an inventory of participants without transferring that annual burden to all participants. Why would we add this burden to all participants?

11:25:45 From Matthew Eisenberg to Everyone:

Is this section legally enforceable? I'm not a lawyer. (a) All Participants shall, with advance written notice and during regular business hours, make their internal practices, books, and records relating to compliance with the DSA available to the Governance Entity for purposes of determining the Participant's compliance with the DSA.

11:25:46 From Elizabeth Steffen to Everyone:

you beat me to that question Matthew

11:26:40 From John Helvey to Everyone:

Is this section legally enforceable? +1 Matthew

11:26:44 From Deven McGraw to Everyone:

@matthew, yes because the DxF agreement that entities sign obligates them to comply with the P&Ps.

11:26:52 From Deven McGraw to Everyone:

One lawyer's opinion 😊

11:29:04 From Matthew Eisenberg to Everyone:

@Devin - Appreciate your opinion but I think this will give many health care organizations pause to signing the DSA?

11:31:06 From Deven McGraw to Everyone:

@matthew, that's clearly where the government's authority to enforce the DXF agreement signing mandate comes into play....

11:31:37 From Deven McGraw to Everyone:

@Matthew, how would you otherwise facilitate compliance across all signatory entities?

11:34:17 From Matthew Eisenberg to Everyone:

@Deven - I understand the need for a Governance Entity to monitor compliance. I just think the need to access "their internal practices, books, and records relating to compliance with the DSA" is vague and may be overly broad?

11:35:51 From Deven McGraw to Everyone:

@Matthew, it's language pretty consistent with the government's authorities under HIPAA -- but would be interesting to see whether it is present in common network agreements like CareQuality, Commonwell, and California's versions of same.

11:36:00 From Morgan Staines, DHCS (he) to Everyone:

Matthew has a point, and inquiry of that type can be burdensome. Can the Governance Entity not assess compliance by outcomes?

11:37:21 From Deven McGraw to Everyone:

At a minimum the governance entity should have to protect and keep those documents confidential and limited us for examination of compliance purposes.

11:42:58 From Jonah Frohlich to Everyone:

Minor earthquake over here...

11:43:08 From Matthew Eisenberg to Everyone:

5.1 at 11:42

11:43:09 From Rim Cothren to Everyone:

Here in Walnut Creek as well.

11:43:26 From Lee Tien (he/him) EFF to Everyone:

did not feel it in Berkeley

11:43:35 From Jason Buckner to Everyone:

Felt in Alameda

11:43:36 From Steven Lane to Everyone:

+ in Palo Alto

11:44:09 From Deven McGraw to Everyone:

Hope everybody is ok - I missed this one as am on the East Coast this week.

11:44:42 From Helen Pfister to Everyone:

Yikes. Hope everyone's safe.

11:44:43 From Jonah Frohlich to Everyone:

On webinar - it was felt in east and south bay

11:45:24 From Mark Savage to Everyone:

Magnitude 5.1 in Santa Clara Co.

11:51:57 From Mark Savage to Everyone:

Is there an assumption that participating Social Services Organizations would be using a QHIO/HIO? Not my assumption.

11:52:12 From Matthew Eisenberg to Everyone:

Rim - In practice, there are other methods for sharing Event Notifications (e.g. DIRECT messaging or ITI-41 push) rather than HL7 v2 - so why is this required for QHIO exchange? "Acute care hospitals and QHIOs must use HL7 v2.x ADT messages to send/exchange notifications." We don't send ADT messages to every CA State HIO.

11:54:28 From Mark Savage to Everyone:

The Gravity Project has developed a Reference Implementation for exchange by FHIR API for those who lack FHIR servers.

11:55:20 From Matthew Eisenberg to Everyone:

<https://www.hl7.org/gravity/>

11:56:58 From Matthew Eisenberg to Everyone:

I'm routinely reminded that Carequality is a FRAMEWORK rather than a network. Subtle point.

11:58:57 From Matthew Eisenberg to Everyone:

Apologies but I need to drop 30 minutes early. As Steven notes, I will be attending the eHealth Exchange meeting on Thursday 12/15 and will NOT be able to join that date's Committee Meeting. Thanks for the opportunity to participate.

11:59:00 From Steven Lane to Everyone:

+1 Matt. Carequality today, and TEFCA in the future are the nationwide interoperability frameworks that allow the networks, HIE/HIOs and others to exchange data between themselves.

11:59:21 From Matthew Eisenberg to Everyone:

I think we should try to align with the TEFCA FHIR Roadmap.

11:59:36 From Rim Cothren to Everyone:

Thanks, Matt. I continually forget that Carequality is not a "network", but would still consider them under this "class" and will try to adjust my language.

12:00:22 From Steven Lane to Everyone:

Absolutely agree that we need to accommodate FHIR-based exchange, as many newer entrants to the digital health and interoperability landscape are developing only in FHIR due to the cost of building multiple versions.

12:00:48 From Tom Schwaninger to Everyone:

To meet CMS Patient Interop requirements, we have invested significantly in FHIR capabilities. To Leo's point, we would hate to have to build out older technologies when we feel we invested for the future.

12:02:26 From Steven Lane to Everyone:

Payers and providers are both required to make Electronic Health Information available in response to FHIR queries.

12:05:17 From Steven Lane to Everyone:

As noted, the real value of notifications is that they give the recipient the opportunity to respond with a request for additional information when appropriate. Notifications in the absence of an automated process to request current information is of limited benefit.

12:07:03 From Steven Lane to Everyone:

Recipients/subscribers should ideally be able to specify how they would like to receive their notifications - V2, Direct, FHIR push, etc.

12:09:58 From Rim Cothren to Everyone:

Can we place move to slide 48?