



February 14, 2023

California Health & Human Services Agency
Data Exchange Framework Committee
1215 O Street
Sacramento, CA 95814

University of California Health
1111 Franklin Street
Oakland, CA 94607

universityofcalifornia.health

Submitted electronically to CDII@chhs.ca.gov

Re: Data Exchange Framework Draft Policies & Procedures

Dear Mr. Ohanian:

I write on behalf of University of California Health (UCH) in regard to the Data Exchange Framework Data Sharing Agreement (DSA) and Draft Policies & Procedures.

UCH comprises six academic health centers, twenty health professional schools, four children's hospital campuses and a Global Health Institute. UCH hospitals are ranked among the best in California and serve over 1.8 million unique patients annually across the State.

UCH submits this letter along with comments to the Draft Policies and Procedures, submitted separately to CalHHS, and both are in addition to the comments raised in UCH's January 31, 2023 letter to you. UCH reiterates its support for health information exchange generally and appreciates the work CalHHS and the Data Exchange Framework Committee and subcommittees have done to promote greater health information exchange for all Californians. Here, UCH respectfully raises two additional comments regarding the scope of Participants under the Framework.

1. Mandated Participants and University of California Student Health Programs

First, UCH specifically emphasizes that the University of California's student health centers and counseling and psychological services programs (SHS/CAPS) are not subject to the mandatory requirement under California Health and Safety Code § 130290(f) to participate in the Framework. SHS/CAPS locations do not meet the statutory definitions of general acute care hospitals, skilled nursing facilities, nor acute psychiatric hospitals as set forth in Section 1250. They do not constitute health care service plans nor disability insurers under Section 130290(f)(4). To the extent that the University's SHS/CAPS locations function as physician organizations or medical groups, or even operate clinical laboratories, they do so in their capacity as a university providing medical services to *students*.

ACADEMIC HEALTH CENTERS

UC Davis Health
UC Riverside Health
UC San Diego Health
UCI Health
UCLA Health
UCSF Health

HEALTH PROFESSIONAL SCHOOLS

Schools of Dentistry
Schools of Medicine
Schools of Nursing
School of Optometry
Schools of Pharmacy
Schools of Public Health
School of Veterinary Medicine

INSTITUTES

Global Health Institute

Indeed, student health information is not subject to HIPAA, but the Family Educational Rights and Privacy Act. [See U.S. Department of Health and Human Services and U.S. Department of Education, Joint Guidance on the Application of FERPA and HIPAA to Student Health Records \(December 2019 update\) \(“Joint Guidance”\), FAQ No. 3.](#) Neither the Policies and Procedures, nor the DSA, reference FERPA’s requirements or the need for compliance with FERPA. This is further supported by the fact that SHS/CAPS locations are operated by the Regents of the University of California, and located at the University’s campuses, with the purpose of serving the University’s student population.

FERPA’s requirements for the privacy of student health records, referred to as “treatment records,” are fundamentally different from those governing other health care providers. As the Joint Guidance directs, an educational institution such as the University of California may only disclose a student’s treatment records to individuals who are providing treatment to the student. Any other disclosures generally require prior written consent of the student. [Joint Guidance](#). The Framework does not contemplate any compliance requirements that assure the privacy and confidentiality of student records.

2. Align Permissive Participants with the 21st Century Cures Act and HIPAA and California Law-Compliant Entities and Organizations

Second, UCH remains concerned with the scope of Participants that may participate in the Framework and reiterates the points raised in its January 31 letter to you.

Instead of the broad scope of Participants that may participate in the Framework, UCH requests that CalHHS consider adopting the scope of actors who are subject to the U.S. Office of National Coordinator for Health Information Technology (ONC) information blocking provisions, and further limiting permissive participation to those actors who: (i) if not covered entities under HIPAA, can demonstrate compliance with HIPAA, and (ii) are directly subject to California law.

Specifically, UCH requests that CalHHS limit permissive participation to health care providers, health information exchanges, health information networks, and health IT developers of certified health IT (as all are defined under 45 C.F.R. § 171.102). All of these actors are subject to the prohibition to engage in information blocking, and as acknowledged by ONC on its official website, “nearly all [information blocking] actors are HIPAA-covered entities or business associates.” See [Information Blocking: Eight Regulatory Reminders for October 6th \(available at healthit.gov\)](#). Limiting the scope of permissive participants to such entities would promote consistency with federal interoperability standards. Further, it would ensure that only those who require access to patient information for treatment, payment, or operations purposes are capable of receiving the information. To the extent these entities are not HIPAA-covered entities, UCH requests that they be required to prove compliance with HIPAA, via a security certification such as HITRUST or other appropriate certification.

To address CalHHS’ goal of exchanging information with social service programs, UCH similarly requests that to the extent such entities are not actors subject to the 21st Century Cures Act, that they also be required to prove compliance with HIPAA, via a security certification such as HITRUST or other appropriate certification.

Here, it is imperative that the terms of the DSA, and the Policies and Procedures, obligate any and all participants, particularly those who are not covered entities, to adhere to all of the same obligations that would apply to a business associate, and confer no additional or implied rights with respect to use of HSSI. As the Policies and Procedures lack clarity in many respects, and are subject to modification, it is unclear whether the rights of participants will extend beyond what HIPAA allows.

Finally, UCH requests that permissive Participants be further limited to those entities who are directly subject to California law, which would largely address UCH's concerns with respect to ensuring that the Framework meets the intent of California laws, including, but not limited to AB 2091.

UCH questions why additional entities and individuals would be allowed to participate in the Framework. Any additional requests for an individual's health information by entities who are not subject to the Cures Act can and should continue to be subject to already-established mechanisms for obtaining health information – via a patient request (and authorization) to share information with the individual or entity.

Conclusion

As stated in our January 31 letter, UCH agrees with, and supports, the goal of the Data Exchange Framework to promote health equity within the State of California. UCH's comments and requests for clarity and revisions are rooted in a deep belief that while today's health information should be used to improve clinical outcomes for all in the future, protecting the confidentiality of data is critical to honor the privacy rights of the patient. A California-focused health information exchange should be consistent with federal laws and already established standards, including the federal requirements for interoperability and prohibitions on information blocking, yet also reflect California's heightened right to privacy, a constitutional right in California.

We look forward to an opportunity to review a revised DSA and Policies and Procedures, as appropriate. We also welcome the opportunity to directly collaborate with you on addressing our requested clarifications. If you have any questions, please contact Tam Ma, Associate Vice President, UC Health Policy and Regulatory Affairs, tam.ma@ucop.edu.

Sincerely,

DocuSigned by:

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Zoanne Nelson

Associate Vice President, Finance and Administration
University of California Health