

Data Sharing Agreement (DSA) Feedback on version 2
Distributed 02.17.22
Meeting 02.23.22
Feedback 03.01.22

Discussion Questions/Slide feedback:

3 Specially Protected Information

Context

Some types of data are specially protected in ways that go beyond the general protections afforded by HIPAA and other law governing health data exchange. An example of specially protected information is substance use disorder information under 42 CFR Part 2.

Discussion

1. Should the DxF DSA discuss considerations specific to pertinent laws (e.g., Lanterman-Petris-Short Act, Lanterman Developmental Disabilities Services Act, 42 CFR Part 2 and Health and Safety Code 11845.5)?
2. Should the DSA just define and address PHI and PII with the requirement to follow all state or federal laws rather than seek to reference these laws which may change with time?
3. Should the policies and procedures require entities to submit a list of laws that apply to their data or some other solution such as tagging the metadata with this information? Should the DxF DSA?

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Discussion Question #1:

Yes – as mentioned in previous feedback and during the meeting, these specially-protected data elements should be referenced and given special attention in the DSA and not grouped under PHI.

Discussion Question #3:

In order to maximize permissible data exchange of behavioral health information, significant attention should be devoted to how the DSA – and the DxF overall – will handle these sensitive data types, especially Part 2 data. Otherwise, participating entities may default to not sharing share such data, particularly if the policies and procedures are complex.

Metadata tagging is one approach to safeguard Part 2 data so that it can be exchanged with the appropriate authorization for permissible exchange purposes. Since the data source is one of the main types of metadata that matters for Part 2 data, e.g. whether the data are being entered or updated by a Part 2 provider, then this could potentially be handled at the DxF platform level instead of by the entity itself. When joining the DxF, participating entities would need to declare themselves Part 2 providers or not. Clear definitions would need to be given so that entities with more than one function, e.g. a social service organization that provides housing navigation but also onsite SUD treatment services, would know how to classify themselves.

Specific sections:

14.2 Authorizations: Entities may be hesitant to accept a client-level authorization from another entity, particularly if part 2 data are being re/disclosed. Many entities will not have the resources or legal expertise to evaluate the legal validity of another organization's authorization, which will lead to barriers and decreased willingness to share data. Again, a standardized, universal client-level authorization form would solve this issue. A robust consent management system may also be helpful.