



Planned Parenthood Affiliates of California

February 14, 2022

VIA ELECTRONIC TRANSMISSION

John Ohanian
Chief Data Officer
California Health and Human Services Agency
Director
Center for Data Insights and Innovation
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Re: PPAC Comments on the Draft Data Exchange Framework (DxF) Policies and Procedures

Director Ohanian:

On behalf of California's seven Planned Parenthood Affiliates, who collectively operate more than 100 health centers across the state and conduct more than 1.2 million annual patient visits, Planned Parenthood Affiliates of California (PPAC) respectfully submits the following comments regarding the draft Data Exchange Framework (DxF) Policies and Procedures for California Information Blocking Prohibitions (OPP-[X]) and Privacy Standards and Security Safeguards (OPP-6).

As a member of the California Health and Human Services (CalHHS) Data Sharing Subcommittee, PPAC appreciates the time and effort spent on drafting the Data Sharing Agreement (DSA) and the Policies and Procedures. PPAC continues to support the broad endeavor by CalHHS to improve population health through the facilitation of health information across California's vast and complicated health care landscape. However, as we have voiced throughout the stakeholder process and in our June 1, 2022 comment letter, PPAC remains concerned about Policies and Procedures that do not clearly and adequately protect patient data.

The DxF must provide greater clarity and protection for patient data than is currently available in the Federal Information Blocking Regulations. The Federal Information Blocking Regulations, including the applicable exceptions, do not provide sufficient clarity or protections for DxF participants who may face pressure to share personally identifying information pertaining to a person seeking, obtaining, or providing sensitive services. Across the country, state governments and private individuals continue to escalate unprecedented efforts to restrict or penalize access to essential health care services, with increasing scrutiny of contraception, abortion, mental health care, and transgender-affirming services. Planned Parenthood, as a trusted provider of sensitive health care services for millions of Californians, sees many patients who come to our health centers, including from out of state, not only because they trust Planned Parenthood to provide high-quality health care, but because they trust Planned Parenthood to protect their privacy and confidentiality. In the endeavor to facilitate information sharing, the DxF must adopt clear protections for data pertaining to sensitive services so as to avoid weakening or undermining California's existing protections for patients who are seeking sensitive services and who may not want their Primary Care Physician, a provider in another state, or other third-party entities to access information regarding sensitive services they received.

Without stronger protections in the Privacy Standards and Security Safeguards, the DxF will undermine California's larger efforts to protect access to and confidentiality of sensitive services. Policies and Procedures that do not include adequate safeguards against potential voluntary or compulsory disclosures of protected health information and personally identifying information, including from entities outside of California, will subsequently diminish California's protections for patient data. This is especially concerning for health care services that are increasingly stigmatized and penalized in other states, as is the case for many sensitive services, causing patients to travel from across the country to California to access private and confidential health care services. For example, the California legislature recently passed SB 107 and AB 2091 in response to other states' hostility to sensitive services. Amongst other provisions, SB 107 and AB 2091 enact data protections for services protected by the Reproductive Privacy Act as well as gender-affirming health care and gender-affirming mental health care respectively. Despite the protection of SB 107, AB 2091, and other bills passed to protect providers and patients from the hostility of other states' laws, law enforcement and private individuals in other states may seek to enact penalties on those who receive or provide sensitive services lawfully in California.

Adequate privacy and security protections are the first line of defense against legal actions founded on another state's laws that violate California public policy. Requiring providers of sensitive services to share information through the DxF - without substantial assurance that entities who can access that information, including participants not covered by the Health Insurance Portability and Accountability Act (HIPAA), will respect patients' privacy needs - risks degrading trust between patients and providers. Regardless of existing federal law, if the DxF is to achieve its intended purpose of maintaining the privacy, security, and integrity of data and promoting trust among participants, then the DxF Policies and Procedures must provide more stringent privacy protections and assure providers that they will not risk their own patients' privacy, liberty, and safety in complying with the data sharing requirements of the DxF.

For these reasons, **PPAC respectfully requests that CalHHS consider additional protections from the increasingly hostile legal landscape that providers and patients face**, especially for sensitive services, when delineating the Policies and Procedures for the DxF pertaining to information blocking, privacy standards, and security safeguards.

Thank you in advance for your consideration of our comments. Please feel free to contact me with any questions or concerns.

Sincerely,



Lisa Matsubara
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Planned Parenthood Affiliates of California