



September 15, 2023

John Ohanian
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California Health and Human Services Agency
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SUBJECT: Comments on Draft Policies and Procedures

Dear Mr. Ohanian:

Thank you for the opportunity to provide feedback on the following draft Policies and Procedures:

- Privacy Standards and Security Safeguards
- Requirement to Exchange Health and Social Services Information.

On behalf of our more than 400 member hospitals and health systems, the California Hospital Association (CHA) respectfully offers the following comments.

Privacy Standards and Security Safeguard

1. *Page 2: General Privacy Standards and Safeguards*
Title: Applicability of Paragraph 1.a.i.b.

Paragraph III.1.a.i.a. already states that each Participant may only access, use, maintain, and disclose Health and Social Services Information consistent with applicable laws and valid authorizations. Therefore, it appears that this Paragraph III.1.a.i.b. would have the effect of subjecting Participants to laws that they are not currently subject to, in addition to the laws they are already subject to. This is problematic for many reasons. Here are some scenarios that illustrate the problems:

- A hospital receives information from a large homeless housing provider. How will the hospital know whether that entity is subject to the California Consumer Privacy Act (CCPA)? To know if an entity is subject to the CCPA, one needs to know the entity's tax status (for profit or nonprofit), the entity's annual gross revenue in the previous year, whether it annually shares the information of 100,000 or more consumers, and whether it controls or is controlled by a business that meets the forgoing criteria. A hospital has no way of knowing this.

- A nonprofit hospital receives information from a large homeless housing provider that has identified itself as being subject to the CCPA (but not HIPAA). The hospital shares information in the patient's medical record. Today, nonprofit hospitals are not subject to CCPA, and the CCPA (§ 1799.145(c)) exempts patient information held by a covered entity to the extent that the covered entity maintains the patient information in the same manner that it maintains HIPAA covered information. Does Paragraph III.1.a.1.b. mean that the hospital must comply with CCPA with respect to the information received from the homeless shelter? Would the answer be different if the hospital were for-profit?
- An acute psychiatric hospital receives information from a physician (who is subject to CMIA). Today, the psychiatric hospital is subject to LPS and HIPAA, but not CMIA. Does Paragraph III.1.a.i.b. mean that the acute psychiatric hospital must treat the exchanged information as subject to CMIA? Again, CMIA and LPS have conflicting provisions; it is not always possible to comply with both.

We suggest deleting Paragraph III.1.a.1.b since Paragraph III.1.a.1.a. and Paragraph III.1.b. together clarify which laws covered entities, hybrid entities, business associates, and other Participants must comply with. Paragraph III.1.a.1.b. adds a great deal of confusion to an already confusing myriad of state and federal health information privacy laws.

2. *Page 2: General Privacy Standards and Safeguards, Paragraph 1.a.ii*
Title: De-Identification Clarification

This seems to suggest that any DxF Participant will be allowed to de-identify data that is received via an exchange. CHA requests CDII clarify this paragraph.

Thank you for your consideration. If you have any questions, please contact me at tgonzalez@calhospital.org.

Sincerely,



Trina A. Gonzalez
Vice President, Policy

cc: DeeAnne McCallin, Deputy Director, Data Exchange Framework, CDII