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VIA ONC COMMENT PORTAL

April 30, 2022

The Office of the National Coordinator for Health Information Technology (ONC)
U.S. Department of Health and Human Services
330 C St., S.W., 7th floor
Washington, DC 20201

Re: Draft United States Core Data for Interoperability, Version 3

Dear Sir/Madam:

The Legal Action Center (“LAC”) is the only non-profit law and policy organization in the United States whose sole mission is to fight discrimination against people with histories of addiction, HIV/AIDS, or criminal records, and to advocate for sound public policies in these areas. LAC appreciates the opportunity to comment on the ONC’s draft United States Core Data for Interoperability, Version 3 (“USCDI, v.3”).

LAC staff regularly consult about confidentiality and related legal issues with substance use disorder (“SUD”) prevention and treatment professionals around the country, as well as health, mental health, public health and managed care providers, welfare and child welfare systems, lawyers and law enforcement officials, courts and other criminal justice agencies, employee assistance programs, and federal, state, and local policy makers. As the Biden-Harris Administration has acknowledged, individuals living with SUD often experience discrimination, stigma, criminalization, and other legal penalties when they are identified as living with drug or alcohol addiction.¹ Unlike other types of protected health information (“PHI”), SUD health records may expose a patient to criminal liability or other negative legal consequences.² These consequences include arrest, prosecution, and incarceration, as well as loss of housing, child custody, employment, insurance, and public benefits.³ As a result, there continues to be a need for rigorous privacy

¹ Office of the National Drug Control Policy, *The Biden-Harris Administration’s Statement of Drug Policy Priorities for Year One*, available at <https://www.whitehouse.gov/wp-content/uploads/2021/03/BidenHarris-Statement-of-Drug-Policy-Priorities-April-1.pdf>.

² Deborah Reid & Karla Lopez, *Discrimination Against Patients with Substance Use Disorders Remains Prevalent and Harmful: The Case for 42 CFR Part 2* (April 13, 2017), <https://www.healthaffairs.org/doi/10.1377/forefront.20170413.059618>.

³ Confidentiality of Substance Use Disorder Patient Records, 82 Fed. Reg. 6052, 6053 (Jan. 18, 2017), available at <https://www.federalregister.gov/d/2017-00719/p-162>.

protections for this type of health information, especially since the fear of lack of confidentiality remains as a barrier to SUD treatment.⁴

LAC has four decades of experience and expertise in applying and interpreting the more protective privacy laws for SUD treatment records in the federal confidentiality law, 42 U.S.C. § 290dd-2, and its regulations 42 CFR Part 2 (referred to collectively as “Part 2”), and certain state health privacy laws.

LAC recognizes there should be adherence to established federal and state confidentiality requirements for the disclosure of individuals’ sensitive health information, while achieving successful interoperability and sharing of electronic patient health data. However, we encourage ONC to address the following issues before the issuance of the final version of USCDI, v.3 that would create a national health information exchange:

- Establish protocols to prohibit misuse or inappropriate disclosure of data sets that contain sensitive health information (e.g., HIV, substance use, mental health, etc.) to child welfare and law enforcement agencies.
- Incorporate existing federal (e.g., Part 2, HIPAA) and state confidentiality requirements for the disclosure and security of sensitive health information for the national health information exchange.
- Establish privacy protocols for communicable disease reporting data that are transmitted to and from state, local, and federal health departments, particularly if the data sets contain patient identifying information about sensitive health conditions (e.g., substance use, mental health, etc.).
- Establish privacy protocols for circumstances where individuals’ granular de-identified data can be re-identified by comparing it to other data sources.

In conclusion, the Legal Action Center looks forward to working with ONC to support efforts to facilitate successful interoperability and sharing of electronic patient health data, while maintaining the confidentiality of sensitive health information. If you should have any questions about these comments and recommendations, please contact Deborah Reid, Senior Health Policy Attorney at dreid@lac.org, or Jacqueline Seitz, Senior Staff Attorney for Health Privacy at jseitz@lac.org.

Sincerely,



Paul N. Samuels
Director/President

⁴ See, e.g., Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2020 National Survey on Drug Use and Health*, A-58 (Oct. 2021), available at <https://www.samhsa.gov/data/sites/default/files/reports/rpt35325/NSDUHFFR1PDFWHTMLFiles2020/2020NSDUHFFR1PDFW102121.pdf>.