



June 17, 2019

Dr. Don Rucker
National Coordinator
Office of the National Coordinator for Health Information Technology
U.S. Department of Health and Human Services
330 C Street SW
Washington, DC 20201

RE: Trusted Exchange Framework and Common Agreement Draft 2

Dear Dr. Rucker:

Blue Shield of California (“Blue Shield”) appreciates the opportunity to provide feedback on the Office of the National Coordinator for Health Information Technology’s (ONC) second version of the Trusted Exchange Framework and Common Agreement (TEFCA). Blue Shield applauds the Administration’s leadership on these important topics and ONC’s work to address the barriers to real-time information exchange in our health care system.

Blue Shield is a nonprofit health plan that offers health benefits coverage to individuals and groups throughout the State of California. Our mission is to ensure that all Californians have access to high quality care at an affordable price. Like ONC, Blue Shield is committed to breaking down barriers to the secure and timely exchange of health information. We have made significant investments in California’s health information exchange infrastructure and share claims data with providers through Manifest MedEx, the state’s largest non-profit health information network. Treating health data as a common good and sharing it widely is the foundation to achieving comprehensive digital health records for each of our members.

In the TEFCA, ONC proposes a framework for trusted exchange of electronic health information, including a Common Agreement that would govern information exchange between health information networks (HINs). While Blue Shield supports the goal of nationwide information exchange, we are concerned that the TEFCA’s reliance on specific “Exchange Purposes” may limit the ability of health care stakeholders to request and share patients’ electronic health information. We encourage ONC to delay its work on the TEFCA to allow time for stakeholders to implement the policies that the Centers for Medicare & Medicaid Services (CMS) and ONC finalize from their Proposed Rules.¹ This would mitigate administrative complexity, provide ONC time to assess the impact of the Proposed Rules and make adjustments if necessary, and also allow ONC to focus on implementation of the Proposed Rules to ensure effective adoption.

¹ Throughout this letter, “Proposed Rules” is used to refer to CMS’ Interoperability and Patient Access Proposed Rule (CMS-9115-P) and ONC’s Proposed Rule on Interoperability, Information Blocking, and the ONC Health IT Certification Program (RIN 0955-AA01).



Below are Blue Shield's detailed recommendations on the TEFCA.

The TEFCA's Proposed "Exchange Purposes" Could Inhibit More Comprehensive Information Sharing

Under the TEFCA, ONC proposes limiting requests for sending and receiving electronic health information between HINs to "Exchange Purposes" that – with key exceptions – mirror the Permitted Uses and Disclosures defined in the HIPAA Privacy Rule. We have two concerns with this approach.

First, authorizing specific Exchange Purposes for information sharing limits how health care stakeholders can leverage HINs to share and use electronic health information, and increases the likelihood that stakeholders won't be able to access patients' health information to support key business or treatment-related functions and activities. For example, in the second draft of the TEFCA, ONC restricts the Exchange Purposes related to "payment" and "health care operations" to a subset of the activities permitted under the HIPAA Privacy Rule for those categories. This change would inhibit health plans from requesting enrollees' clinical information for important activities, like improving risk adjustment and quality reporting.

We are also concerned by the discrepancy between the limited Exchange Purposes ONC outlines in the TEFCA and the agency's proposed information-blocking rules, which require that health information exchanges and health information networks exchange electronic health information for *any* purpose permitted under state or federal law. The inconsistencies in these proposals need to be addressed before the TEFCA is finalized. Otherwise, ONC may open the door to stakeholders using the limited Exchange Purposes proposed in the TEFCA as an excuse to avoid complying with the more comprehensive information-sharing requirements finalized by CMS and ONC from the Proposed Rules. Given this, we urge ONC to delay its work on the TEFCA and instead prioritize implementation of CMS' and ONC's final information-sharing regulations.

ONC Should Delay the TEFCA to Allow Health Care Stakeholders Adequate Time to Implement Policies Finalized from the Proposed Rules

Blue Shield is encouraged by the progress that national, state, and regional health information exchanges have made to improve and scale their capacity to facilitate trusted exchange of electronic health information between providers, health plans, and other entities. We believe that the information-sharing requirements in the CMS and ONC Proposed Rules will accelerate the health care industry's participation and investment in health information exchange and increase the use of existing private sector solutions to information sharing across HINs.

Given the current landscape and in anticipation of forthcoming information-sharing requirements from CMS and ONC, we recommend ONC hold off on finalizing the TEFCA. We believe ONC runs the risk of trying to do too much in too short a timeframe if the TEFCA and information-sharing regulations are finalized within the currently proposed timeframes. Layering the administrative, legal, and operational requirements proposed in the TEFCA on top of the significant changes health care stakeholders are expecting in the forthcoming information-



sharing regulations could slow progress toward comprehensive information exchange rather than advance it.

Given these concerns, we recommend ONC delay its implementation of the TEFCA to allow the health care industry to absorb and adapt to the requirements that are finalized from the Proposed Rules. This would mitigate administrative complexity and allow ONC time to assess the information exchange landscape and adjust the TEFCA accordingly. In addition, by delaying its work on the TEFCA, ONC could focus on helping stakeholders effectively and efficiently implement the information-sharing requirements, which we believe will have a more significant impact in moving the industry toward comprehensive, real-time sharing of clinical and claims data than the TEFCA.

Conclusion

Thank you again for the opportunity to provide comments on ONC's second draft of TEFCA. We would welcome the opportunity to respond to any follow-up questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Andy Chasin".

Andy Chasin
Policy Director
Blue Shield of California