



The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
One Ashburton Place, Room 1109  
Boston, Massachusetts 02108

CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lieutenant Governor

MARYLOU SUDDERS  
Secretary

Tel: (617) 573-1600  
Fax: (617) 573-1891  
[www.mass.gov/eohhs](http://www.mass.gov/eohhs)

June 17, 2019

Dr. Donald Rucker  
National Coordinator  
Department of Health and Human Services  
Office of the National Coordinator for Health Information Technology  
Mary E. Switzer Building  
Mail Stop: 7033A  
330 C Street SW  
Washington, DC 20201

**Re: Comments on Draft 2 of Trusted Exchange Framework and Common Agreement**

Dear Dr. Rucker:

On behalf of the Commonwealth of Massachusetts, I thank you for this opportunity to provide feedback on Draft 2 of the Trusted Exchange Framework and Common Agreement (TEFCA).

The Massachusetts Executive Office of Health and Human Services (EOHHS), which includes the Massachusetts Medicaid Program (MassHealth) and the Massachusetts Health Information Highway (Mass HIway), form the largest Secretariat in Massachusetts. EOHHS and its constituent agencies provide services to some of the most needy and vulnerable residents in the state.

EOHHS is the single state agency responsible for the administration of the Commonwealth's Medicaid program and Children's Health Insurance Program (CHIP) through MassHealth. The MassHealth program provides health coverage for over 1.8 million Massachusetts residents.

The Massachusetts Health Information Exchange, otherwise known as the Mass HIway, is a program within EOHHS tasked with promoting health information exchange in the Commonwealth. Currently, the Mass HIway operates a Direct Messaging network, transmitting more than 14 million transactions a month, that offers doctors' offices, hospitals, laboratories, pharmacies, skilled nursing facilities, and other healthcare organizations a way to securely and seamlessly transmit vital health data electronically, regardless of affiliation, location, or differences in technology. The Mass HIway also has a health information technology consulting service called HIway Adoption and Utilization Support Services to help Medicaid providers achieve interoperability through assessing a client's technology and workflow, developing a plan to meaningfully exchange health data, and supporting the implementation of that



plan. The activities of the Mass HIway help the Commonwealth's healthcare community improve care coordination, quality, patient satisfaction, and public health reporting while containing costs.

### **I. The Commonwealth Supports Increasing Interoperability Nationally**

We are encouraged that the Office of the National Coordinator (ONC) has released the proposed interoperability rule and this second draft of TEFCA to support the movement toward national interoperability. As we have previously written to you and the Centers for Medicare and Medicaid Services (CMS), we are encouraged by your efforts to put patients in charge of their medical information. We also applaud the proposed implementation of Application Program Interfaces (APIs) and Fast Healthcare Interoperable Resource (FHIR) standards and praise ONC for adopting the U.S. Core Data for Interoperability (USCDI) to allow for the seamless integration of health information between payers, providers, and patients.

We believe TEFCA should provide the framework of privacy and security that is needed to make APIs and FHIR successful. We agree with ONC's three high-level goals of 1) creating a single "on-ramp," 2) enabling health information to securely follow the patient, and 3) supporting nationwide scalability.

A single "on-ramp" is the key to successful interoperability because the current fragmentation of the market leads to health IT focusing on the wrong objectives for success—namely, data instead of services. For example, we have learned that in Massachusetts, many ENS recipients contract with multiple ENS vendors for service. ENS vendors often require the submission of their own ADTs to receive notifications of other providers. ENS recipients need to contract with multiple vendors because each vendor may not have all the ADT feeds necessary to cover an ENS recipient's entire patient panel. One downside to this contracting arrangement is that ENS recipients may get multiple messages for the same person because the data received from multiple contracted ENS vendors overlap. It appears that many ENS and other healthcare IT vendors currently spend their resources competing on data acquisition rather than on services most useful to their clients. We highlight the need for good patient matching to allow the "off-ramp(s)" to function well. We support initiatives that allow for data interoperability resulting in the marketplace focusing its energy on services development rather than data acquisition.

### **II. The Commonwealth Believes in the Need to Promote Sharing of Substance Use Disorder Data**

For TEFCA to be a successful framework of privacy and security encouraging data exchange, it must take a holistic approach to encapsulate the entire healthcare continuum including behavioral health services. As we have previously submitted to you, CMS, and the Office of Civil Rights (OCR), we believe that true interoperability needs a better alignment of technology, medical care, and behavioral health care. EOHHS is encouraged that ONC is contemplating the use of security labeling for sensitive protected data. We know ONC understands the challenges of 42 CFR Part 2 (Part 2) through the development of the security labeling guidance. However, we would like to reiterate our stance that Part 2 creates a disparity between medical providers and mental health and substance use disorder providers. Part 2's more stringent requirements for data sharing undermine the ability of providers and payers across the system, including EOHHS, to share information to provide effective treatment, coordinate care, and accomplish many other functions vital to improving the quality of health care while decreasing health care costs.

Although Part 2 applies to only a subset of PHI relating to SUD treatment, it has had a chilling effect on information sharing far beyond its scope. Providers are confused about whether they are subject to Part

2, and there is also confusion regarding what data, exactly, is subject to Part 2. This confusion has led providers and other stakeholders to refrain from sharing information even when Part 2 does not apply. Unfortunately, this is particularly true when it comes to addressing the needs of patients impacted by the opioid crisis. We urge ONC and OCR to work with other stakeholders to address the limitations Part 2 imposes on sharing patients' health information in order to provide effective treatment, improved health, and value-based care.

We thank you for consideration of our comments and look forward to continuing to work with our federal partners.

Sincerely,



Marylou Sudders

cc: Daniel Tsai, Assistant Secretary and Director of MassHealth  
Karbert Ng, Mass HIway Program Director