



**California  
Hospital  
Association**



August 18, 2023

The Honorable Anthony Portantino  
Chair, Senate Appropriations Committee  
State Capitol, Room 412  
Sacramento, CA 95814

**SUBJECT: AB 1331 (Wood) - Concerns**

Dear Senator Portantino:

On behalf of the members of the California Hospital Association (CHA) and the California Association of Public Hospitals and Health Systems (CAPH), and the millions of patients they serve, we are writing to express some concerns related to AB 1331 (Wood) and ask for additional changes to the bill. Without these changes, the Data Exchange Framework and provisions outlined in AB 1331 may not be workable for hospitals throughout California.

Hospitals and health systems have been at the forefront of data exchange and support a statewide health information exchange (HIE) framework in California that will advance seamless care transitions, improve quality, and reduce disparities in care. Hospitals and other providers have invested significant resources in health information exchange and many of our state's leaders participate in state, federal, and national initiatives to advance data exchange. Hospitals and health systems support the development of a governance framework and appreciate the legislative proposal by Assembly Member Jim Wood to further these efforts.

While hospitals and health systems remain committed to statewide health information exchange, CHA and CAPH are concerned with the following provisions in Assembly Bill 1331:

**1. The enforcement mechanisms should be discussed with the DxF Implementation Advisory Committee and wait until the DSA is finalized.**

CHA, CAPH, and member HIE leaders have been working to inform the development of the DxF and accompanying DSA and Policies and Procedures for nearly two years. However, there is a significant level of work that is still needed to finalize the DSA, which as noted above, is a legally binding document. For example, the Policies and Procedures do not currently provide fundamental safeguards about the exchange of Californians' personal health information in a satisfactory way and do not comply with the requirements of the enabling statute, AB 133. Until the foundational Policies and Procedures are finalized, so that hospitals and other entities have a clear understanding of what will be required of them to comply, they are not able to implement the DSA.

Additionally, we are concerned with the recent amendments to AB 1331 that would create two new enforcement mechanisms for required signatories to comply with a January 2024 implementation. Specifically, we are concerned with the following:

**a. The language directing the Center for Data Insights and Innovation to report violations to state licensing entities.**

The California Department of Public Health (CDPH) is the licensing entity for hospitals. Its primary priority is to protect patient safety and ensure quality care for all patients and residents of the more than 14,000 health care facilities regulated in California.

The language suggests compliance with the DSA could compromise hospital licensing. Given where we are with the development of the DSA, we have strong concerns with this and do not think it is appropriate for CDPH to play this type of role with oversight and enforcement.

**b. Compliance with the DxF as a condition of contracting with state government.**

The amendment requires that — as a condition of contracting with the Department of Health Care Services (DHCS), CalPERs or Covered California — hospitals, skilled-nursing facilities, and other providers must be in compliance with the DxF. As previously noted, additional work and time are needed to complete the DSA. Tying DxF compliance to contracting with these state agencies is, at a minimum, wholly premature at this time and could have a profound, negative impact on access to care in our state. For example, hospitals contract with DHCS to deliver services and receive payment in Medi-Cal fee-for-service, and for other reasons, including data sharing. Potentially disrupting hospitals' ability to enter into these contracts would be punitive and could jeopardize health care delivery, including in the Medi-Cal program.

**2. There should be parameters on how much and how often the proposed Governing Board can alter the Policies and Procedures connected to the DSA.**

Beginning Jan. 31, 2024, hospitals, health plans, and other providers must be actively exchanging data. The current version of the DSA includes a series of Policies and Procedures documents that lay out requirements such as what data elements must be exchanged, how quickly entities must respond to a data request, and privacy standards. For the required signers of the DSA, these and future Policies and Procedures documents become legal requirements. As such, we are concerned that without a framework for changing the DSA that is transparent and allows facilities to plan, it may result in ever-changing requirements. Relatedly, we are concerned with the provision that exempts the Governing Board from the Administrative Procedures Act. Without changes, we are concerned that new requirements would not be developed in an open and transparent manner, with ample opportunity for stakeholder input.

Further, it is vitally important that any changes made to the DSA be consistent with national standards for data exchange, as required by Subsection 130290(a)(1). California's efforts to promote data exchange are happening within a larger national framework that includes federal

law (e.g., the Health Insurance Portability and Accountability Act and the 21<sup>st</sup> Century Cures Act), along with national exchange networks. Anything the state does must be consistent with these national standards, as required in the state legislation, or we risk creating unnecessary duplication and confusion for providers implementing the DSA, which would drastically slow down our progress.

**3. The conflict-of-interest provisions may not be appropriate for the work of the DxF Governing Board.**

Unfortunately, creating a better balance on the Governing Board is not possible under the current wording of AB 1331. Under the conflict-of-interest (COI) provisions contained in Subsection 130212(k)(6), a board member *“shall not be employed by, a member of the board of directors of, affiliated with, a vendor to, or otherwise a representative of signatories of, the California Health and Human Services Data Exchange Framework data sharing agreement while serving as a board member.”*

This COI restriction would have the effect of ruling out most, if not all, of the experts on data exchange in this state. It would prevent anyone with experience implementing and using data exchange in practice from serving as a member of the Board.

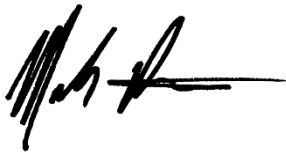
**4. The makeup of the Data Exchange Framework (DxF) Governing Board should include a balance of experts on data exchange and signatories of the Data Sharing Agreement (DSA).**

California proudly boasts many of the nation’s leading experts on data exchange. Two members of the federal Health Information Technology Advisory Committee (Medell Briggs-Malonson, MD, and Steven Lane, MD) work in this state. Many Californians have also been building data exchange for more than two decades — their expertise should be included on the DxF Governing Board.

At the same time, it is essential that this Governing Board balances those experts with practitioners in the field who are responsible for implementing the DSA, especially those who work in under-resourced safety-net organizations. They can bring the on-the-ground perspective of how a change in state policy will affect health care delivery for our most vulnerable patients.

We look forward to working with the author’s office to discuss these and other crucial aspects of the proposal.

Sincerely,



Mark Farouk,  
Vice President, State Advocacy  
California Hospital Association



Jill Perez,  
Senior Director of Government Affairs  
California Association of Public Hospitals  
and Health Systems

cc: The Honorable Jim Wood, DDS  
The Honorable Members of the Senate Appropriations Committee  
Agnes Lee, Consultant, Senate Appropriations Committee  
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