

June 17, 2019

Donald Rucker, MD
National Coordinator for Health Information Technology (IT)
Office of the National Coordinator for Health Information Technology (ONC)
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

RE: Trusted Exchange Framework and Common Agreement (TEFCA) Draft 2

Dear Dr. Rucker:

On behalf of the National Association of County and City Health Officials (NACCHO), I write to provide comment on the *Trusted Exchange Framework and Common Agreement (TEFCA) Draft 2*. NACCHO is the voice of the nearly 3,000 local health departments across the country. These city, county, metropolitan, district, and tribal departments work every day to protect and promote health and well-being for all people in their communities.

Local health departments are integral to the public health enterprise and serve their communities directly or collaborate with healthcare providers and other partners to protect the nation's health. As such, local health departments, like their state counterparts and federal partners, rely on robust data exchange and interoperability between health organizations. The concepts within the first and second TEFCA drafts (i.e., inter-network connectivity, single on-ramp, and public health permitted purposes) can be critical elements of supporting these exchanges electronically, given the wider adoption of electronic health records today. Local health department professionals use information technology and data systems to assess community health, provide preventive services, perform treatment and follow-up procedures, evaluate the effectiveness of preventive services and programs, and identify resources for improving health initiatives within their communities. NACCHO joins other public health partners in strongly supporting the addition of "push" data exchange in this second TEFCA draft.

NACCHO's comments on the second TEFCA draft aim to ensure that it reflects the persistent interests and needs of local health departments. Local health departments are a critical component of the nation's health infrastructure. Allowing earlier and greater participation by local health departments in designing policy and technical aspects of that infrastructure will be necessary to support it.

The comments listed below are based on the TEFCA version 2 draft posted to <https://www.healthit.gov/topic/interoperability/trusted-exchange-framework-and-common-agreement>:

- TEFCA should make clear that public health is represented in the governance of the Recognized Coordinating Entity (RCE) and TEFCA governance moving forward. Public health is a government-



organized and population-focused activity that has both a different legal basis and different needs and from purely patient or provider-orientations. In TEFCAs, as in a number of the processes described in the recent Centers for Medicare and Medicaid Services and ONC “Blocking” Notices of Proposed Rulemaking (NPRMs), processes are cited that will impact public health, but in which public health has had no representation and, in some circumstances, has been actively excluded.

- Although the scope of public health practice encompasses assuring the health, care, and well-being of individuals and populations, much of public health needs to be recognized as different from the activities of patients and providers and should not be held to all the same considerations as either:
 - Health Insurance Portability and Accountability Act (HIPAA) and the Common Agreement (pages 16, 18-19, 46) – NACCHO supports policies and practices that ensure that information exchange is secure, private, and available for authorized public health purposes. HIPAA contemplated the roles of government agencies and public health in great depth and carved out considerations as a result. However, additional provisions from HIPAA should not become incumbent on public health agencies who were explicitly excluded from these HIPAA considerations previously. Public health agencies are health oversight agencies under HIPAA and, in conjunction with supporting laws, are allowed to receive and transmit patient data without consent in order to assure health security and protection of population health. TEFCAs should not try to extend HIPAA to these organizations where they do not participate in patient access services.

It should be made clear in TEFCAs, for example, that the provisions for individual access services do not apply to public health registries. And specific language in TEFCAs that releases federal agencies from HIPAA should be extended to include state and local government public health agencies as well:

A federal, or state, or local agency that is serving as a Participant and is not otherwise subject to the HIPAA Rules is not required to comply with the HIPAA Privacy and Security Rules referenced in these Minimum Required Terms and Conditions. The federal or, state, or local agency will comply with all privacy and security requirements imposed by applicable state and federal laws.

- Qualified Health Information Network (QHIN) Fees (page 20) – In a change from the first draft of TEFCAs, public health is no longer excluded from paying for QHIN transactions. Public health, including local health departments, cannot and should not be expected to pay charges for QHIN data exchanges made in support of state laws. These charges would be above and beyond the health information network membership charges for local health departments that are already difficult for public to support. The new charges would, among other things, obstruct local health departments from using perform essential public health services. The changes made to allow these charges to public health in this second draft of TEFCAs should be rescinded.
- Important public health activities like electronic case reporting and electronic laboratory reporting make use of common services platforms that use Business Associate and operations authorities to

ease interoperability between the public health and clinical sectors. TEFCA should extend its trust framework such that HIPAA Business Associate authorities and operational needs can be supported as well.

NACCHO appreciates the efforts of the ONC to gather input on *Trusted Exchange Framework and Common Agreement (TEFCA) Draft 2*. NACCHO looks forward to continuing to collaborate with ONC as a partner in this effort. If you have any questions, please contact Eli Briggs, Senior Director of Government Affairs at ebriggs@naccho.org or 202-507-4194.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori Tremmel Freeman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Lori Tremmel Freeman, MBA
Chief Executive Officer