

Legal Issues in Interagency Data Sharing

Report for C.G.S. 4-67z

January 15, 2022

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Introduction

Pursuant to C.G.S. 4-67z, the Chief Data Officer each year, in consultation with the Attorney General and executive branch agency legal counsel, will review “methods to facilitate the sharing of ...high-value data [of executive branch agencies] to the extent permitted under state and federal law, including, but not limited to, the preparation and execution of memoranda of understanding among executive branch agencies.”¹ This report provides an update on the development of these methods, through January 15, 2022.

An initial report on legal issues in interagency data sharing² included the following recommendations, based on survey results, review of data sharing agreements, analysis of state and federal laws and regulations, and consultation with state agency staff and national experts:

- I. **Establish a coordinated statewide governance structure for cross-agency data sharing:** The absence of a statewide governance structure leads to fragmented approaches to sharing data on high-priority issues which reduce the ability of the state to mobilize a response; and
- II. **Develop more flexible, durable data sharing agreements:** A proliferation of data sharing agreements makes oversight difficult and reduces the ability to protect clients’ data and manage risk.

In the past year, the state has made progress in three areas related to these recommendations:

- I. **Coordinated statewide governance structure:** In July 2021, ten agencies signed an Enterprise Memorandum of Understanding setting forth a coordinated governance structure, through expansion of the Preschool through Twenty and Workforce Information Network (P20 WIN) system. The statutory basis and learning agenda for P20 WIN were also updated to allow for future expansion. These milestones move forward the ability of the state to respond to high-priority issues in a coordinated fashion for those agencies that are part of the P20 WIN system.
- II. **Flexible, durable data sharing agreements:** Data sharing agreement templates are in development for the major legal and regulatory frameworks applicable to the ten agencies participating in P20 WIN, which will provide a flexible, durable way to define the data sharing process between agencies and with outside entities. Completion of these templates will help create a regular, consistent process for data sharing.
- III. **Process and technical improvements:** Planning and development began on process and technology improvements to facilitate the safe, ethical, equitable and secure sharing of data among the P20 WIN agencies. The process and technical improvements will enable the governance structure and the new agreements to operate in a more streamlined fashion.

The remainder of the report describes these changes in more depth.

¹ Connecticut General Statutes, section 4-67z: https://www.cga.ct.gov/2020/sup/chap_050.htm#sec_4-67z

² The January 15, 2020 report is posted here: <https://portal.ct.gov/-/media/CT-Data/PA-19153-Legal-Issues-in-Interagency-Data-Sharing-Report-11520.pdf>

Coordinated Statewide Governance Structure

In support of the recommendation for coordinated governance, several changes occurred in 2021. First, in July 2021, ten agencies signed a new enterprise agreement for the P20 WIN system.³ The agreement builds on and evolves the existing P20 WIN structure while maintaining a decentralized approach which allows each agency to retain administrative authority over their data. Program management for P20 WIN is provided by the staff of the OPM Data and Policy Analytics unit, under the supervision of the Chief Data Officer (Operating Group). The function of securely linking the proposed data from participating agencies is undertaken through staff at the Connecticut Department of Labor (Data Integration Hub).

The primary agreement is an Enterprise Memorandum of Understanding (E-MOU),⁴ which sets forth the “rules of the road” for how data are shared for all current and future participating agencies, regardless of whether the data is identifiable, de-identified, anonymized or aggregated. The participating agency is agreeing to participate in the governance process set forth to make data sharing a uniform, efficient, and effective process, saving time and money. The United States Commission on Evidence-Based Policymaking recommended the Enterprise Memorandum of Understanding (E-MOU) as a “best practice” method for data sharing.⁵ The P20 WIN E-MOU was developed by the ten participating agencies in P20 WIN (Participating Agencies), OPM and the Office of the Attorney General, in accordance with the framework and “uniform interagency data sharing protocol” shared in the prior year’s report.

The E-MOU sets forth the governance structure, roles and responsibilities of agencies participating in P20 WIN. The E-MOU includes:

1. A Resident Advisory Board to work on equity and public trust issues;
2. Other committees as needed to respond to inquiries and improve safe, ethical and secure sharing of data across agencies;
3. The role and responsibilities of the Operating Group and the process for managing data sharing requests;
4. How data are shared and the responsibilities of the Data Integration Hub and any Participating Agency that has sovereignty for the data;
5. Enterprise privacy and security and how to avoid any breaches of data; specifications for the data matching services; and onboarding new participating agencies.

³ The agencies are: State Board of Education, Office of Early Childhood, Connecticut State Colleges and Universities, Department of Labor, University of Connecticut, Connecticut Conference of Independent Colleges, Department of Social Services, Office of Higher Education, Department of Children and Families, Connecticut Coalition to End Homelessness and Office of Policy and Management.

⁴ A copy of the E-MOU and related documentation are maintained at:

<https://portal.ct.gov/OPM/P20Win/Governance>

⁵ The Promise of Evidence-Based Policymaking: Report of the Commission on Evidence-Based Policymaking, September 2017.

The vision and purpose for P20 WIN were also expanded through legislation, to move beyond education and workforce, to include health and human services.⁶ Public Act 21-2, Section 250, June Special Session⁷ expanded the purpose “to inform policy and practice for education, workforce and supportive service efforts.” P20 WIN was created to link data to improve education for students of all ages and the related legal framework was closely tied to federal education laws. The changes to the statutory basis for P20 WIN expanded the types of requests that P20 WIN can fulfill and clarified aspects of the governance framework, including a definition for the E-MOU and reconstituting the Executive and Data Governing Boards. In addition, Public Act 21-2, Section 271, June Special Session⁸ described several general characteristics of data sharing agreements, which can be of general use.⁹

As part of the revised governance framework, the two primary P20 WIN governing bodies held public meetings through 2021, providing transparency and public accountability for the data sharing process. The Executive Board, featuring leadership from each agency, holds quarterly meetings, while the Data Governing Board meets monthly. In addition, the Executive Board can create subcommittees or other groups as needed to move their work forward.

The completion of the E-MOU is a milestone for the ability to share data between agencies and with the public. Several related efforts also identified the need for consistency and coordination in the legal and governance framework for interagency data sharing, particularly through P20 WIN:

- The Children’s Behavioral Health Plan Data Integration Workgroup recommended broadening state agency participation in P20 WIN for the twelve agencies that are part of the Behavioral Health Plan implementation efforts¹⁰
- The CREATES (“Cliff Retirements Adding Efficiency, Accountability, and Technology to Economize State Government”) report cited P20 WIN as the basis for interagency data sharing efficiencies, noting that “Ongoing expansion of the P20 WIN system will lead to increased data gathering, which could provide the foundation for a common platform either built off P20 WIN or closely compatible with it” through the development of a statewide governance framework¹¹
- The state Health IT Plan Environmental Scan (“EScan”) included a recommendation that health IT “efforts should build upon P20 Win, CGS 4-67z, CGS 17b-112l(e), and other initiatives to build

⁶ A summary of the legislative changes related to P20 WIN can be found in the slides and minutes for the Data Governing Board meeting of July 2, 2021, at: <https://portal.ct.gov/OPM/P20Win/Governance>

⁷ Public Act 21-2 can be found at: <https://www.cga.ct.gov/2021/ACT/PA/PDF/2021PA-00002-R00SB-01202SS1-PA.PDF>

⁸ <https://www.cga.ct.gov/2021/ACT/PA/PDF/2021PA-00002-R00SB-01202SS1-PA.PDF>

⁹ The section only directly applies to “data sharing agreement[s] entered into pursuant to subsection (b) of section 12-15 of the general statutes, subsection (j) of section 31-225a of the general statutes or section 269 of this act by an office, department, board, commission, public institution of higher education or other instrumentality of the state with one or more individuals or organizations that allows for the sharing of data held by such state instrumentality,” but the provisions outlined are useful more generally for interagency data sharing.

¹⁰ <https://www.plan4children.org/connecticuts-plan/behavioral-health-plan-workgroups/data-integration/>

¹¹ <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2021/03-2021/Governor-Lamont-Receives-Report-With-Suggestions-on-Government-Efficiency>

shared practices and tools among attorneys representing state agencies to help facilitate data sharing through implementation of standardized legal agreements and processes.”¹²

Flexible, Durable Data Sharing Agreements

Following completion of the E-MOU with the ten participating agencies, OPM worked with the same agencies to draft template data sharing agreements to cover education, workforce and health and human services. While the E-MOU covers the overall governance, the data sharing agreements (DSAs) are tailored to the specifics of individual requirements and arrangements and different combinations of data. Template DSAs, still under review by state agencies and the Office of the Attorney General, will enable a flexible, durable data sharing process for the State, while also allowing agencies to have proper oversight over their data and to reduce the effort needed to share data for legitimate state purposes. OPM is in the process of finalizing these documents, with completed templates expected in early 2022.

The “template” approach allows flexibility by tailoring agreements to the specific context for each agency and each request and promotes durability by developing templates that draw on common elements which can be re-used and revised as needed. Templates are in development for the following legal and regulatory frameworks:

1. Education records (K-12 and higher education, through FERPA)
2. Health records (including Medicaid and behavioral health)
3. Unemployment insurance (including wage records)
4. Financial aid (FAFSA)
5. Benefits programs (including SNAP and TANF)
6. Child welfare and child protective services (Title IV-B and IV-E)

The documents are specific to interagency sharing through P20 WIN but can be modified and adapted to other contexts as necessary. The template documents contain the following common elements:

1. Responsibilities of data providers (the entities providing the data to be matched or linked; in P20 WIN terminology, Participating Agencies), including:
 - a. Duties when transmitting data, including encryption standards and reliance on systems and carrier lines for transmission
 - b. Compliance with E-MOU (and the governance process described there)
 - c. Documentation for agency staff and vendors providing and transmitting data
 - d. Compliance with applicable and required legal and regulatory frameworks
2. Responsibilities of Data Integration Hub (the entity providing the data matching or linking services; in P20 WIN, fulfilled by the Department of Labor), including:
 - a. Data storage and transmittal standards, including encryption
 - b. Standards and processes for granting access to and monitoring Authorized Users
 - c. Ability of data providers to audit or assess the services

¹² <https://portal.ct.gov/-/media/OHS/Health-IT-Advisory-Council/5-Year-Statewide-Health-IT-Plan/Esca/CT-Health-IT-Plan---Environmental-Scan-Report---Findings-and-Draft-Recommendations.pdf>

- d. Compliance with standards for: Use, Data Deletion, Anonymization of data and cell suppression
 - e. Except as provided in the DSA and E-MOU, the Hub shall not distribute data without written approval from the data providers
 3. Responsibilities of Data Recipient (the entity requesting access to the linked or matched data, whether identified or de-identified), including:
 - a. Approved Use and Data Elements for Project, including review before dissemination and procedures for data retention and destruction
 - b. Agreement to standards for data sovereignty and accuracy
 - c. Description of processes for Safeguarding Data, Security Controls and anonymization or cell suppression Policy
 - d. List of individuals permitted access to data, and accountability for unauthorized access, use or disclosure
 - e. Project reporting requirements and acknowledgment, including any financial understanding or fees.

Process and Technical Improvements for Data Sharing

In addition to the changes in the legal and governance framework for data sharing, progress is also underway on process improvements and technical upgrades for interagency data sharing.

As part of the P20 WIN expansion, OPM and the participating agencies are developing a revised data governance manual, which will merge the P20 WIN data governance materials with the Data Sharing Playbook, developed in 2020 with the Office of Early Childhood (OEC), and Skylight Digital, a digital consultancy for government.¹³ The Playbook will continue to provide guidance on the processes for data requests and interagency data sharing, based on user interviews, research into best practices from data sharing experts and case studies from other states. The playbook is written in an easy-to-read manner and can help agencies build a data sharing framework that respects and abides by the laws and regulations that apply to their data.

In addition, in 2021, as part of a federal grant to support Statewide Longitudinal Data Systems,¹⁴ the P20 WIN participating agencies reviewed the technical infrastructure to identify potential improvements to increase efficiency and security. A P20 WIN Technical Upgrade planning group met from February to July 2021 to identify potential improvements to the technical infrastructure of the P20 WIN system. Demands on the P20 WIN system are expected to increase with the addition of new participating agencies and an increased focus on use of data to inform policy and decision-making.

A goal for technical upgrades is to reduce the turnaround time for data requests, while maintaining and improving system security. In line with this goal, the following recommendations were developed by the

¹³ The Playbook is accessible at: <https://ctopendata.github.io/data-sharing-playbook/>

¹⁴ A general description of activities under the SLDS grant, including the technical infrastructure, is available here: <https://nces.ed.gov/programs/slds/state.asp?stateabbr=CT>

planning group and reviewed and approved by the Data Governing Board and Executive Board for implementation:

- 1) Formalize an advisory role for DAS / BEST in P20 WIN governance
- 2) Develop an incident response plan
- 3) Identify tools to streamline the data request process
- 4) Upgrade data transmittal applications to improve audit and notification options
- 5) Explore options to reduce the movement of data to increase security and improve data request management

In combination, implementing these recommendations will improve security and increase system capacity, while preserving the core elements of the P20 WIN approach and the legal and governance process that gives agencies sovereignty and decision-making authority over their own data. Recommendations 1 and 2 were implemented in 2021 and members of the planning group continue to explore options for recommendations 3 – 5, with any changes likely to occur in 2022.¹⁵

Conclusion

The intersection of these efforts – the legal and governance framework and the supporting people, process and technology – will serve to make data sharing more efficient, safe, ethical, equitable and secure. Coordinated data governance, through an expanded P20 WIN, will create a consistent process for development and review of interagency data requests, improving the experience for agencies and data requestors. Flexible, durable data sharing agreements will allow a consistent approach with templates that can be tailored to individual agency use. Process and technical improvements to the data request and sharing process will reduce the end-to-end time for requests, allowing for data to be used to inform decision-making on an ongoing basis.

¹⁵ A complete memo, with further discussion of the recommendations and current infrastructure is posted at: <https://portal.ct.gov/-/media/OPM/P20Win/Governance-Docs/P20-WIN-technical-upgrade-planning-recommendations-FINAL.pdf>