Information Blocking Task Force Meeting

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March 8, 2019

Agenda

- Call to Order/Roll Call

- Overview of Work Group 1 Progress - Relevant Statutory Terms and Provisions

- Overview of Work Group 2 Progress – Exceptions

- Overview of Work Group 3 Progress - Conditions and Maintenance of Certification

- Public comment

- Next Steps and Adjourn

The Office of the National Coordinator for
Health Information Technology

Information Blocking Task Force Charge

- **Overarching Charge**: Provide recommendations on policies related to information blocking; the "information blocking," "assurances," and "communications" conditions and maintenance of certification requirements; and the enforcement of all the conditions and maintenance of certification requirements.

- **Specific Charges:** Provide recommendations on the following topics:

    - Information Blocking:

        - ➢ ONC definitions/interpretations of certain statutory terms and provisions, including the price information request for information

        - ➢ Seven exceptions to the information blocking definition, and any additional exceptions (request for information)

        - ➢ Complaint process

        - ➢ Disincentives for health care providers (request for information)

    - "Information blocking," "assurances," and "communications" conditions and maintenance of certification requirements

    - Enforcement of all the conditions and maintenance of certification requirements

Draft Timeline

Meeting Date	Draft Agenda Items
Week 1 Feb 18 – Feb 22	• Overview and HITAC Charge • Overall process and timing for providing recommendations
Week 2 Feb 25 – March 1	• Schedule TF Kick-off Meetings • Review Charge/Work Plan
Week 3 March 4 – March 8	• Each TF meets • Discussion/early draft recommendations
Week 4 March 11 – March 15	• Each TF meets • Finalize draft recommendations for HITAC review
Week 5 **March 18 – March 22**	• **Present draft recommendations to HITAC**
Week 6 March 25 – March 29	• Update and revise recommendations
Week 7 April 1 – April 5	• Update and revise recommendations
Week 8 **April 8 – April 12**	• **Present progress on draft recommendations to HITAC**
Week 9 April 15 – April 19	• Update and revise recommendations
Week 10 **April 22 – April 26**	• **TF presents final recommendations to HITAC (if not finalized sooner)**
Week 11 **April 29 – May 2**	• **Final transmittal letter from HITAC**
NLT May 3, 2019	• **HITAC recommendations are submitted to National Coordinator**

Group 1 - Relevant Statutory Terms and Provisions

Meeting Dates	Topics
Week 1: February 18-22	• Overview and HITAC charge • Overall process and timing for providing recommendations
Week 2: February 25 – March 1	• **Kick-off meeting (March 1)**
Week 3: March 4-8	• **Meeting 1:** Health information networks/exchanges • **Meeting 2:** EHI, including the price information request for information

Week 4: March 11-15	• **Meeting 1:**
	    • Practices that may implicate the information blocking provision
	    • Parties affected by the information blocking provision and exceptions
	• **Meeting 2:** Wrap-up and summary of work group draft recommendations

Week 5: March 18-22	• **HITAC Committee Meeting (March 19-20) – Present draft recommendations**

Work Group 1 – Topics Discussed

- **Health information networks/exchanges**
  - Scope of definitions
    - Too narrow?
    - Potential for gaming?
  - Situations when provider is also a HIN or HIE
    - Penalties
  - Intent of definitions to cover external interfaces from a hospital?
- **EHI definition**
  - Should this definition be augmented to include clarity around actors?
  - Human readable or codified information
  - Exclude aggregated patient information?

- **Price information**
    - View that we need price transparency and now is the time to address it within the context of information blocking; no other levers to address it available.
    - View that price transparency is important, but out of scope for this rule; unintended consequences need to be considered.
- **Practices that may implicate the information blocking provision**
    - Discussion regarding scope and implications of examples of potential information blocking
- **Parties affected by the information blocking provision and exceptions**
    - Definition and scope of "actor"
    - Payers
    - Concern regarding self-insured companies

Group 2 - Exceptions

Meeting Dates	Topics
Week 1: February 18-22	• Overview and HITAC charge • Overall process and timing for providing recommendations
Week 2: February 25 – March 1	• **Kick-off meeting (March 1)**

Week 3: March 4-8	• **Meeting 1:**
	   • Preventing Harm
	   • Promoting the Privacy of EHI
	   • Promoting the Security of EHI
	• **Meeting 2:**
	   • Recovering Costs Reasonable Incurred
	   • Responding to Requests that are Infeasible

Week 4: March 11-15	• **Meeting 1:**
	   • Licensing of Interoperability Elements on RAND Terms
	   • Maintaining and Improving Health IT Performance
	• **Meeting 2:**
	   • Additional exceptions (request for information)
	   • Complaint process
	   • Disincentives for health care providers (request for information)
	   • Wrap-up and summary of work group draft recommendations

Week 5: March 18-22	• **HITAC Committee Meeting (March 19-20) – Present draft recommendations**

Work Group 2 – Topics Discussed

- **Preventing Harm**
  - **(a)(1):** Concern that this could become a large exception hole (e.g. most people's records have some level of inaccuracy); suggestion to restrict to true data corruption.
  - **(a)(2):** If there is no obligation upon a provider to correct identification mistakes, why would they?; suggestion to limit to cases where a data holder *knows* that the data is not applicable to the patient and to create a test.
  - **(a)(3):** Is this specifically aimed at certain MH conditions?
  - (b) and (c): individualized finding should be recorded somewhere accessible
  - **(b)(2):** "relevant" vs "appropriate"
  - Suggestion to define organizational policy

Work Group 2 – Topics Discussed (cont.)

- **Promoting the Privacy of EHI**
  - Overhead requirements for organizations
  - Suggestion to add language that organizational policies must comply with federal, state, and local laws
  - **(b)(2):** consent (or dissent) should be documented/recorded
  - **(c)(3):** meaning of "meaningful"

Group 3 - Conditions and Maintenance of Certification

Meeting Dates	Topics
Week 1: February 18-22	• Overview and HITAC charge • Overall process and timing for providing recommendations
Week 2: February 25 – March 1	• **Kick-off meeting (March 1)**

Week 3: March 4-8	• **Meeting 1:**
	   • Information Blocking
	   • Assurances
	• **Meeting 2:** Communications

Week 4: March 11-15	• **Meeting 1:** Enforcement of all the conditions and maintenance of certification requirements • **Meeting 2:** Wrap-up and summary of work group draft recommendations
Week 5: March 18-22	• **HITAC Committee Meeting (March 19-20) – Present draft recommendations**

Work Group 3 – Topics Discussed

- **Information blocking**
  - No issues

- **Assurances**
  - Ambiguity in "full compliance and unrestricted implementation" language in preamble
  - Intent of (a)(3)
  - (b)(1) Scope of retention
  - (b)(1): Comparison of time periods for record retention and records access
  - (b)(1): Proposal of 3-year retention period for voluntary withdrawals; proposal for infinite retention period
  - Self-developers

- **Assurances - Request for information on participation in the TEFCA**
  - Cannot comment without seeing TEFCA
- **Communications**
  - **IP issues**
    - How to protect developer community from nefarious purposes
    - Intent/definition of "fair use"
  - **Whistleblower protection**
  - **Notification to vendor**
  - **Scope of "non-user facing"**
    - Proposed amendment: Adjust definitions to clarify that administrative functions of HIT would be "non-user facing aspects" based on the assessment that those communications are not matching the purpose described in 21st Century Cures and also a limited set of users.

- **Communications**
  - **Screenshots**
    - Whether layouts are/should be considered IP
    - Purpose of prioritizing communication between health care entities; comparing configuration between healthcare entities should pose minimal risk to IP rights.
    - Possible proposal: Draw a distinction around purpose of use. (Think also in relation to "fair use" definition. Fair use might be applicable or insufficient.)
  - **Discussion of (D)(2)(iii) and (iv):**
    - Possible proposal: Should be amended to a list of which third party content might appear in a screen. Enumerating elements per screen is not feasible.
    - Extensive conversation of (D)(2)(iii) and (iv) and the complexity/impossibility of doing this.
  - **Discussion of (E):**
    - Possible proposal: Effort for notice and contracting is only 40 hours for clerk, massively underestimated. Recommend that ONC should revise estimate. More roles involved than clerk, work involved on the part of the recipients.
    - Possible proposal: Eliminate 2 year timeframe and propose update at next renewal.

Work Group 3 – Topics Discussed (cont.)

- **Communications**
  - **Discussion of (b)(2)**
    - Possible proposals:
      - (b)(2)(i) - Can we add contract "renewal" in here?
      - (b)(2)(ii) - State a roadmap within two years, with compliance not to be unreasonable
- **Enforcement**
  - Ban is serious, but fair given the process proposed by ONC.
  - Possible proposal: Use both email and certified mail for notices of initiating direct review, potential non-conformity, non-conformity, suspension, proposed termination, and termination.

To make a comment please call:

Dial: 1-877-407-7192

*(once connected, press "*1" to speak)*
All public comments will be limited to three minutes.
You may enter a comment in the
"Public Comment" field below this presentation.
Or, email your public comment to onc-hitac@accelsolutionsllc.com.

Written comments will not be read at this time, but they will be delivered to members of the Workgroup and made part of the Public Record.

Public Comment

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