



## Meeting Notes

### Health Information Technology Advisory Committee

#### Information Blocking Task Force

#### Workgroup 2: Exceptions

March 13 2019, 4:00 p.m. – 6:00 p.m. ET

Virtual

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The March 13, 2019, meeting of the Information Blocking Task Force Workgroup 2: Exceptions of the Health IT Advisory Committee (HITAC) was called to order at 4:00 p.m. ET by Lauren Richie, Designated Federal Officer, Office of the National Coordinator for Health IT (ONC).

**Lauren Richie** conducted roll call.

### Roll Call

#### MEMBERS IN ATTENDANCE

**Andrew Truscott**, Co-Chair, Accenture  
**Michael Adcock**, Co-Chair, Individual  
Anil Jain, Member, IBM Watson Health  
Steven Lane, Member, Sutter Health  
Arien Malec, Member, Change Healthcare

#### MEMBERS NOT IN ATTENDANCE

Valerie Grey, Member, New York eHealth Collaborative

#### ONC STAFF

Penelope Hughes, ONC Backup/Support  
Mark Knee, Staff Lead  
Lauren Richie, Branch Chief, Coordination, Designated Federal Officer  
Lauren Wu, ONC SME

**Lauren Richie** called the meeting to order and turned the meeting over to Andy Truscott, co-chair.

**Andy Truscott** welcomed the workgroup and then dove into the discussion regarding the exception for promoting the security of electronic health information (EHI).

### Exceptions

#### § 171.203 EXCEPTION - PROMOTING THE SECURITY OF ELECTRONIC HEALTH INFORMATION



- **Andy Truscott** suggested including that if the requestor is a “legitimate” entity, ignorance of their security posture is no reason to deny information sharing.
- **Anil Jain** commented that if the actor has minimum compliance, it is not a good enough reason to have an “easy out” for sharing. He also noted the same concerns in (e) as in the Privacy exception.
- **Arien Malec** noted that the security policies of an organization cannot override the Health Insurance Portability and Accountability Act (HIPAA) access. There needs to be an exception for HIPAA access in the form and format that the patient has requested, even if the means the patient requested has lower security requirements.
  - **Andy Truscott** suggested that where the requestor is the data subject (patient) themselves, then security is no reason to prevent sharing unless there is legitimate doubt of the identity of the patient.

## § 171.205 EXCEPTION – RESPONDING TO REQUESTS THAT ARE INFEASIBLE.

- **Steven Lane** felt that (d) *Provision of a reasonable alternative* helps because the alternative has to be reasonable.
- **Arien Malec** interprets the intent of information blocking to be that small start-ups must respond to all requests for permissible use and this exception is only triggered in cases when the request is in a form/format that cannot be produced and there is an obligation to meet the request.
  - **Mark Knee** noted that the conversation is appropriate and in alignment with ONC’s thinking.
- **Andy Truscott** suggested that there is a need for clarity when something is truly infeasible versus just inconvenient.
- **Anil Jain** felt that for (d) it would be interesting to see how this plays out, perhaps there is a narrow set of use cases that this would be used within.
- **Steven Lane** questioned if “timely” needed a definition.
- **Arien Malec** suggested that in (a) through (d) it should be clarified that it should say that an actor must meet all the conditions at all times.
- **Arien Malec** suggested that in places where exceptions are discussed “all of,” “some of” or “one of” is needed clarity in the regulation text.
- **Arien Malec** for (d) he recommended updating to the following (changes in red):
  - Provision of a reasonable alternative. The actor must work with the requestor in a timely manner to **identify and provide a reasonable alternative** means of accessing, exchanging, or using the electronic health information.
- **Arien Malec** noted that what is reasonable should take into account the nature and urgency of the request.
- The workgroup members asked Arien Malec to provide clarity around his comments in the shared Google document.

## § 171.206 EXCEPTION – LICENSING OF INTEROPERABILITY ELEMENTS ON REASONABLE AND NON-DISCRIMINATORY TERMS.

### Responding to Requests



- **Arien Malec** expressed that receipt of a request by an appropriate party is highly important. There should be an obligation on the licensor to publish contact information and an obligation on the requestor to use the published contact information.
- The majority of the workgroup felt that ten days was not enough for making an initial offer on RAND terms.
  - **Mark Knee** noted that ONC worked with other agencies, including FTC, on this response timeframe.
- **Anil Jain** suggested different timelines for each step of the process.
- **Andy Truscott** suggests that members of the workgroup go into the Google document and recommend verbiage changes to the regulation text.
- **Arien Malec** noted that there was general agreement on the following:
  - There should be a requirement on the licensor to publish contact information.
  - There should be an obligation on the requestor to use the published contact information.
  - The timeframe for requesting and receiving a quote is context sensitive. Getting from request to quote within ten days in most circumstances is unreasonable.

## Reasonable and non-discriminatory terms

- The group discussed possible updates to (b)(1)(i).

## Public Comment

There was no public comment.

## Next Steps and Adjourn

In preparation for the next meeting, the workgroup members were asked to go into the shared Google document and add recommendations and commentary. The next meeting of IACCTF's Workgroup 2: Exceptions will be on Friday, March 15 at 2:30 p.m. ET.

**Lauren Richie** adjourned the meeting at 6:05 p.m. ET.