Information Blocking (IB) Workgroup 1

Transcript
March 21, 2019
Virtual Meeting

SPEAKERS

Name	Organization	Title
Michael Adcock	Individual	Co-Chair
Andrew Truscott	Accenture	Co-Chair
Cynthia A. Fisher	WaterRev LLC	Member
Valerie Grey	New York eHealth Collaborative	Member
Anil K. Jain	IBM Watson Health	Member
John Kansky	Indiana Health Information Exchange	Member
Steven Lane	Sutter Health	Member
Arien Malec	Change Healthcare	Member
Denni McColm	Citizens Memorial Healthcare	Member
Aaron Miri	The University of Texas at Austin, Dell Medical School, and UT Health Austin	Member
Sasha TerMaat	Epic	Member
Lauren Thompson	DoD/VA Interagency Program Office	Member
Sheryl Turney	Anthem Blue Cross Blue Shield	Member
Denise Webb	Individual	Member
Mark Knee	Office of the National Coordinator	Staff Lead
Mike Lipinski	Office of the National Coordinator	Staff Lead
Morris Landau	Office of the National Coordinator	Back Up/ Support
Penelope Hughes	Office of the National Coordinator	Back Up/ Support

Operator
Thank you. All lines are now bridged.

Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer
Hello, everyone. Welcome to Workgroup 1, looking at statutory terms and provisions under the information blocking task force. We have a full agenda today. But why don't we go ahead and start with a roll call? Andy Truscott?

Andrew Truscott – Accenture – Co-Chair
Present.

Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer
Michael Adcock? Sheryl Turney?

Sheryl Turney – Anthem Blue Cross Blue Shield - Member
Present.

Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer
John Kansky?

John Kansky – Indiana Health Information Exchange - Member
Here.

Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer
Perfect. Denni McColm? Cynthia Fisher?

Cynthia Fisher – WaterRev LLC - Member
Present.

Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer
Great. All right. I will turn it over to our co-chairs to get us started.

Andrew Truscott – Accenture – Co-Chair
Thanks very much, Lauren. Just for the record, Denni did say that she felt she probably couldn't make this meeting this morning. Personally, I think that we probably have quite a lot of information blocking **[inaudible] [00:01:03]** over the last few days. But it's good to be back

on the phone as we focus on the particular area that we have. I'm contemplating that for this one, rather than walking through the agenda, we should actually go straight into the Workgroup Google Doc and start working from there because we do have some sort of drafting that we can start throwing rocks at and prodding as a team. Does that work for John, Cynthia, Sheryl?

John Kansky – Indiana Health Information Exchange - Member
Sure.

Cynthia Fisher – WaterRev LLC - Member
Yeah, good idea.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member
Yes.

Andrew Truscott – Accenture – Co-Chair
Okay. So, Mark, thanks for bringing that up where we can see it. So, you've got it on the right monitor. Can you scroll to the bottom of the section or literally start reading the proposal? And as I've pulled everything together, what Mike and I have looked to do is split it into three sections. One is a discussion and this is the discussed text that we'll put in our letter of transmittal for initially HITAC and then, eventually to ONC. This is the summary of discussions that we've been having. These are our thoughts and what we're thinking we should be trying to achieve. We then got a recommendation for the entirety of the regulatory text. And then, we've also got a recommendation for any updates to the preamble. Now, with the regulatory text proposal, I've actually put in the entire thing.

So, rather than saying update Line 4 to include this and Line 17 have you thought about that, we're actually saying this is what we think the text should say. And in some places, there's more change than others. And you'll see probably coming out of other Workgroups some of these who have a greater degree of proposed change for various reasons and they're all good reasons, obviously. In the preamble recommendation, it's a little bit more intricate in that rather than just regurgitating the entire preamble, which wouldn't really be helpful, we're looking to say a statement saying this is what we think you should add to the preamble or, if need be, replace the entire preamble with this or remove this stuff from the preamble or whatever. So, that's a little bit more intricate. The discussion is obviously just the lay of the land around what we've been talking about. Does that make sense to people?

John Kansky – Indiana Health Information Exchange - Member
Yes.

Andrew Truscott – Accenture – Co-Chair
Yeah, thanks. Cynthia, Sheryl, are you good with that approach?

Cynthia Fisher – WaterRev LLC - Member
Yeah, I think I got it.

Andrew Truscott – Accenture – Co-Chair

Cool. Mark, can you zoom in a bit so that we can actually – it's a bit larger when everyone turns?

Mark Knee – Office of the National Coordinator – Staff Lead

Yeah. I have it at 150. Let me go to 200. Is that any better?

Andrew Truscott – Accenture – Co-Chair

Yeah, thanks. And just scroll up a bit so we can just see the discussion. Okay. So, trying to summarize, when we present this to the full HITAC, I fully intend to have a slide of facts and figures at the beginning that just goes through and says 172, that's the number of hours we've spent on calls. About 390, that's the number of hours we've actually spent on thinking about this stuff and all that kind of stuff because there's a lot of thinking to try and get down to what we see is three paragraphs of discussion. Even though we are largely okay with the definition for this particular piece we're looking at around EHI, I still think it's important that ONC actually sees that we've discussed it and we've considered it and we have a thoughtful approach. Does it make sense? I'm not going to take tacit agreement on this. I'm looking for yes, we get it, Andy.

John Kansky – Indiana Health Information Exchange - Member

Yes, we get it, Andy.

Andrew Truscott – Accenture – Co-Chair

Thank you, John.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Okay. I agree.

Andrew Truscott – Accenture – Co-Chair

Thank you. And if you want to change this then, tell me that, too, because we can change. It's not a complete dictatorship.

Cynthia Fisher – WaterRev LLC - Member

I'm just a little delayed at getting it up on my screen. So, I have my print out. So, I was in transit. That's why you're having me hold back. But I'll catch up.

Andrew Truscott – Accenture – Co-Chair

Okay, no worries. So, literally, I intend to just read through the discussion points together, unless people would like to read it in silence and then, say okay or nay. It's your call on this.

John Kansky – Indiana Health Information Exchange - Member

I'm an auditory learner. So, I love to be read to.

Andrew Truscott – Accenture – Co-Chair

An Ollie, okay. Do you guys have Jack and Ollie in this country?

Cynthia Fisher – WaterRev LLC - Member

No.

Andrew Truscott – Accenture – Co-Chair

Okay. You have no idea what I'm talking about. It's a children's TV program when I was growing up where you used to have a story read to you. Okay. Anyway, the Workgroup believes –

Cynthia Fisher – WaterRev LLC - Member

It is amazing how English and English. I'm a little slow on the pickup.

Andrew Truscott – Accenture – Co-Chair

So, I'm basically the wrong person to be reading this. But unless someone else is going to offer, I'm going to. Okay. So, discussion point. The Workgroup believes that this edition of electronic health information covers the breadth of data, which requires addressing within the regulations. We recommend some slight modifications to language to cover both current and future tenses (can versus could) to address where discreet data may not identify an individual. However, in aggregate, it may. An additional minor update would be to be clear that we are not seeking to promote a reduction in the payments of transactions, which take place for a particular use of a singular payment. We are desiring that information for all payments be covered within this definition, to this end, pluralizing payment to payment.

In addition, we do think that making it clear that information that could be – it's not very well drafted. Who did this? In addition, we do think that making it clear that "information" could be that as human readable, e.g. now into text captured within clinical notes, and "machine readable", e.g. codified information using terminologies or classifications such as LOINC, **[inaudible] [00:07:57]**, CPT, ICD are specifically covered to prevent ambiguity. And this should be updated within the preamble.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

So, Andy, we're basically saying though that we're focusing and limiting this on information because I've already asked the question would this also cover things like tumor sections and things of that nature that are not machine readable, of course, it would provide information. And, originally, the guidance that I received when I asked several members of the ONC was it should be limited to just data type of information. But now, we're limiting it to data type information. That's what we're recommending, right? That's what you're saying here, right? Again, I was asking just for clarification purposes.

Andrew Truscott – Accenture – Co-Chair

Sorry, what were you saying? I was cutting you off there. Please continue.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

No, no. I'm just asking because as we get into things where we're doing sort of AI prototyping and there are models that are being made, and there's information that can be gleaned from all of that and it's not data type of information. So, do we really want to limit it to that scenario? I don't know if that's what we want to do.

Cynthia Fisher – WaterRev LLC - Member

I understand what Sheryl is saying because Google has a whole application on looking at slides **[inaudible] [00:09:45]** and on the imaging side that is more machine real, which AI in the future will be much different than human scanning and imaging and perhaps even improved upon. So, I think what we had discussed, Andy, earlier was that, in Sheryl's point, is inclusive of but not limited to as we know it today. I think we want to make sure we prevent the American Stage Coach Society saying that if a new train comes out that it looks like a horse and it only goes as fast as a horse, right? So, if we had the Stage Coach Association of America, our future transportation might have been very strictly limited. So, I'm just throwing out that crazy example.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Yeah. That's a great analogy, Cynthia. That's exactly what I was saying. I know that's what our focus is right now. But I'm just trying to think down the road. And there are things like breathalyzers where you, basically, blow into something that's connected to your phone or can look inside your ear or take your temperature or any of those things. Yes, there's information that's transmitted to data. But there may be other information that is the actual event that's occurring and statistics about that as well. I don't know that we want to just limit it to information itself.

Cynthia Fisher – WaterRev LLC - Member

I think, Andy, the tighter we define it is a danger. And I also think I'm a little confused. I support Sheryl on her comments. I think, again, if we say can be as we see it today inclusive of, and then, I would even argue from a machine readable standpoint that text is also readable for searchability and aggregation and terminology. So, I guess the intent is that we look at whatever is the clinical record that it can be also analyzable, for instance, so many test results. If they're in a PDF, it does you no good if you're looking at trends over time. And patients really want to have that at their fingertips. And I think the other thing that I'm a little confused about is the past tense/future tense can and could that are in this document. Where are we going with that? That's just confusing to me.

Andrew Truscott – Accenture – Co-Chair

I'm sorry. I'm going to update this to say our intent is that this should be a very broad definition of electronic health information to cover eventualities, which are not yet even dreamt of. But also, including things like imaging and information received from other modalities. Is that kind of summarized?

Cynthia Fisher – WaterRev LLC - Member

And not limited to.

Andrew Truscott – Accenture – Co-Chair
Yeah.

Cynthia Fisher – WaterRev LLC - Member
You don't want to say now, we're in this whole new world but we're not held accountable. Do you know what I'm saying?

Sheryl Turney – Anthem Blue Cross Blue Shield - Member
Right, exactly. That would need to be what you're writing, Andy.

Mark Knee – Office of the National Coordinator – Staff Lead
Sorry to interrupt. This is Mark. I think it's a great conversation. Can I just ask because the way I look at the definition, it seems pretty broad to me, what's tripping you up that is not broad enough? Because that's what's kind of confusing me about the suggestion in the red text.

Andrew Truscott – Accenture – Co-Chair
If you scroll down to it, Mark, so we can actually look at the red text together. It's the actual red text.

Mark Knee – Office of the National Coordinator – Staff Lead
Oh, the original one, yeah. Hold on.

Andrew Truscott – Accenture – Co-Chair
No, no, no. Go to the one we're proposing because then, we can have the discussion points. Scroll back.

Mark Knee – Office of the National Coordinator – Staff Lead
All right. There.

Andrew Truscott – Accenture – Co-Chair
There we go. So, Sheryl and Cynthia, if you take a look at this, I'm updating the discussion text. But to Mark's point, this seems pretty broad.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member
What you were showing us was what to me seemed narrow it somewhat. That's why when I asked the question –

Andrew Truscott – Accenture – Co-Chair
All I was showing was the summary of our discussions. And I've updated that right now to include the summary of discussion we've just had, which we need to make sure we support.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Right. Because in the beginning, as I said, to what was in reg text, I did ask the question was this intended to include DNA results and things like that where over time there's going to be more science, and they'll be able to learn more from the same blood sample. And the answer was yes. And it just came to me that what we were reviewing this morning seemed to narrow that. That's the only reason why I –

Andrew Truscott – Accenture – Co-Chair

No. That first set of paragraphs I read out was purely on the discussions that we've had. The DNA thing, I must confess, I didn't call it out specifically because I felt it was handled in just the general definition of information. I do think the imaging type information and the other telemetry type information that is something we haven't really touched upon and I will update with discussion text to include that.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Okay. I'm on track now.

Andrew Truscott – Accenture – Co-Chair

Okay.

Cynthia Fisher – WaterRev LLC - Member

I just want to say inclusive but not limited to because it leaves it open to be broader than we can identify today with imaging. And with imaging, they might say well, isn't your radiology report good enough? Why did we need to have the image available to the patient? But the reality is the images waste a lot of productive employment time chasing them down. And then, they don't work when they're on a CD to be uploaded and blah, blah, blah. But that being said, I think we're looking at the future of empowerment of the patient. And is there any way that we can highlight in the recommendation of the text that we can see as a committee here what has been changed from the original definition of electronic health information?

Andrew Truscott – Accenture – Co-Chair

No. We can put them side by side and that's it.

Cynthia Fisher – WaterRev LLC - Member

Could you color it? Could you highlight it? Could you make it –

Mark Knee – Office of the National Coordinator – Staff Lead

You can underline it probably. Can you underline the changes, Andy?

Andrew Truscott – Accenture – Co-Chair

No, because – well, this one I was actually able. I've just underlined it.

Cynthia Fisher – WaterRev LLC - Member

That's the only change, the word could?

Andrew Truscott – Accenture – Co-Chair

Well, I've managed to go through and read it all now myself. I've been trying to summarize everything so that we can actually start pulling together the recommendations. I'm just putting in that. **[Mumbling reading]**. Yeah, that's it. Only the bits, which are underlined.

John Kansky – Indiana Health Information Exchange - Member

Andy? It's John. This comment may land with a thud. But why is that entire phrase necessary after the common, "or with respect to which there is a reasonable basis to believe the information could be used to identify the individual."

Cynthia Fisher – WaterRev LLC - Member

Thank you, John. Thank you. I don't understand why it's in there. Thank you.

Andrew Truscott – Accenture – Co-Chair

Okay. Just because a piece of data doesn't say this is Andy Truscott who lives at 515 Island Stream Court, Spring, Texas on it does not mean that Andy Truscott could not be identified from it. Mark, you're a legal beagle. You can help with this. But it's coming from the burden –

[Crosstalk]

Morris Landau – Office of the National Coordinator - Back Up/ Support

This is Morris, I'm sorry. The language came directly from the definition of protected health information. That's where it was derived from. And the notion is is that if a piece of data is not identifiable but, collectively, various pieces to a reasonable person could reconstruct that information to make it identifiable. That was the notion behind that phrase. There's a reasonable basis that a reasonable person could identify who that individual is. And that's the history behind that language.

Andrew Truscott – Accenture – Co-Chair

Morris, let's go a bit further. But let's go to why that actually was even in that definition of electronic health information. It's because competent **[inaudible] [00:19:03]** start identifying people even though the original data set might not be as explicitly identifiable as you'd think.

Morris Landau – Office of the National Coordinator - Back Up/ Support

That's correct.

Andrew Truscott – Accenture – Co-Chair

So, increasingly, it's becoming ever more and more straight forward to do combine data sources and identify the health information of the individual from them.

Cynthia Fisher – WaterRev LLC - Member

Okay. Guys, could I just get us back to Cures Act on this definition? If you read the actual Cures Act, Cures Act says health information, essentially, in the Act, not protected health

information. So, Cures actually defines the different buckets. And in Cures Act, it defines electronic health information much broader. And it, basically, says it should be broad and not limited to the identifiable information. And so, the Cures Act is broader than the HIPAA protected health information definition. And it applies to entities that are not covered entities under HIPAA. And it applies to data that goes beyond protected health.

Andrew Truscott – Accenture – Co-Chair

Where is the definition of EHI in Cures? It refers to it a lot, but it doesn't define it.

Cynthia Fisher – WaterRev LLC - Member

There's nothing in the legislation itself. I sent in some bullet points that we researched this that the EHI should be limited to the individually identifiable information. Congress actually used the term health information in the broad sense not individually identifiable health information and not protected health information. And they wanted to limit it to identifiable information, they would have used the other terms because they were already identified.

Andrew Truscott – Accenture – Co-Chair

Okay. So, you would say that the nature of how a CTI procedure works that is electronic health information within the terms of 21st Century Cures?

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Okay. So, I'm an outsider so you have to help me. CTI?

Andrew Truscott – Accenture – Co-Chair

An x-ray, let's just call it an x-ray. How an x-ray procedure works, would you say that comes under health information?

Cynthia Fisher – WaterRev LLC - Member

Yeah. And the health information definition is broader. And protected health would be under that. But it's not limited to protected health. Congress made it in a much broader definition of the term and had the references to the already standing definitions that were in HIPAA in the Cures Act.

Mark Knee – Office of the National Coordinator – Staff Lead

Sorry to interrupt.

Cynthia Fisher – WaterRev LLC - Member

I'm just putting that out there.

Mark Knee – Office of the National Coordinator – Staff Lead

I pulled up a slide, spoiler alert for some of the presentation we're going to be doing tomorrow. But I pulled a slide from the information blocking presentation that Mike Lipinski and I did on Tuesday. And this kind of is, I think, a pretty clear diagram that shows kind of how we came about our definition of electronic health information. And I think it might be

helpful for this conversation. Can you all see that? Is it big enough?

Andrew Truscott – Accenture – Co-Chair

Yeah. Make it larger. But, yeah, the point is that Congress is an amorphous thing, which changes over time. But you're right. The PHSA had already defined health information. And so, we're building on top of that.

Cynthia Fisher – WaterRev LLC - Member

I just don't understand why it has to go all the way into the protected health information area because the whole bit is patients getting access, right? Remember what the purpose of this is is you want patients to get access to information.

Mark Knee – Office of the National Coordinator – Staff Lead

But we're just using EPHI, but it's not limiting. It's a broader definition, as you can see. In the definition of EHI, it starts with protected health information but then, it says and. So, it's broader than that.

Morris Landau – Office of the National Coordinator - Back Up/ Support

And to put a finer point on what Mark is talking about, we're not just talking just to HIPAA definition. As you know, HIPAA only applies to covered entities and business associates. This definition applies to other entities that include EPHI. So, it's not just limited to HIPAA. It's a broader context than that.

John Kansky – Indiana Health Information Exchange - Member

Andy, I have a comment when this thread is done. Maybe that's now. So, I have a slightly different point that I want to make back to that clause on "or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. That's from HIPAA because HIPAA's purpose was to protect a patient's information. And so, it was important not to leave the loophole that there was a reasonable basis to be able to identify the patient. So, you can't share that information. HIPAA is protecting it because you might be able to identify the patient from it. So, it was adding that to the definition to protect the patient from sharing.

In information blocking, now we're trying to protect the industry, including the patient, from a lack of sharing. Is there really a problem where the industry is refusing to share information that doesn't identify the patient but could?

Cynthia Fisher – WaterRev LLC - Member

Yes.

Andrew Truscott – Accenture – Co-Chair

I think what Cynthia is proposing is actually saying hang on. With 21st Century Cures, Congress is trying to broaden this out again. I think she's implying, and I don't want to put too many words in your mouth but I'm trying to take this forward, you're implying that with what we've done in HIPAA, what we've done inside PHSA, there has actually been a

narrowing of a lowercase P protected health information, which was unfortunate and inappropriate and Congress is seeking to broaden it out again.

Cynthia Fisher – WaterRev LLC - Member

May I give you a couple of examples?

Andrew Truscott – Accenture – Co-Chair

Go ahead.

John Kansky – Indiana Health Information Exchange - Member

I'd love it.

Cynthia Fisher – WaterRev LLC - Member

As we move into the future, you could imagine that a patient may want, from that electronic health information, relevant information to manage their health themselves. So, you may be able to look at something that would be individually identifiable to the patient as part of the record. But you could also look to a link. I'm looking at them in comparison to a population base, in comparison to – you could look at data that's provided along with that patient in their health management that's part of their electronic health record, right? So, you could provide them, for instance, if you looked at their reports not just whether they're in range but as we move into the future, it determines that we look into the future on Type 1 diabetes. I don't know.

I can't give you a specific right now. But I'm thinking combining research applicable – say the optimal information you may want to Google or have from the literature search. And that may be AI aggregated and the patient would be well informed of where they are in the range that may change their behavior patterns to help.

John Kansky – Indiana Health Information Exchange - Member

I understand the potential applications of the data. What I'm trying to grasp is, I don't know why this is the first – so, information that could be reasonably used to identify the patient. So, let's say there's a dermatologist who has taken a photograph of a rash. And inside that photograph is a birth mark. The photograph is being used for academic training purposes with the permission of the patient. And I guess, theoretically, you might be able to identify the patient from that birth mark. That sounds like a ridiculous example. But now, we're saying that when that provider is asked to share data, how in the heck are they supposed to find, recognize, know that that photograph with the birthmark in it is part of what needs to be shared?

Now, if that example seems ridiculous, make that a little bit more practical in terms of data sets, which have been "deidentified" but someone might challenge the fact that the inclusion of that patient's data in that data set after removing certain identifiers, there's a reasonable chance that they could be reidentified from that. So, what we're saying with this law is by putting that in the definition of electronic health information is you are breaking federal regulation if you don't share that information when requested. But what even is that information?

Andrew Truscott – Accenture – Co-Chair

And I'll go one step further. What Cynthia is supposing is that it doesn't matter that there's an identifying birthmark in there. The fact is it's health information because it's information about health.

Cynthia Fisher – WaterRev LLC – Member

We're asking that the entities share the health information. And it can be much in a broader sense. And the other part of it is getting to pricing because, also, when you look at pricing, you may have pricing information that's identifiable to an individual and you may have pricing at the point of care that's not identifiable to the individual. So, there might be another center that can do it at one-tenth of the cost. And they'll take cash or whatever the modality is or optimal. But if you look at part of authorization or pricing, I think Les gave a really great example about how we could catapult this novely by the patient, himself or herself, have their summary plan, have that all circumvented.

And if we get entangled in our underwear where it says identifies the individual with respect to which there is reasonable basis to believe the information could be used to identify the individual, I think it's just confusing entanglement where at the end of the sentence, it already says for the provision of healthcare to an individual.

John Kansky – Indiana Health Information Exchange - Member

Cynthia, I think you and I violently agree for two different reasons but it doesn't matter because we agree. All that phrase does is make the regulation harder to understand, harder to implement, harder to comply with, and harder to enforce.

Cynthia Fisher – WaterRev LLC - Member

I agree.

Mark Knee – Office of the National Coordinator – Staff Lead

While there's a minute of quiet, just real quickly, I wanted to speak to the issue of congressional intent. And I guess we were trying to abide but what we viewed as congressional intent because as I showed on the diagram, **[audio distortion]** defined health information. So, then, what we did is we looked at we're dealing with electronic health information. So, then we looked to HIPAA for a definition of EPHI and electronic media. And then, we kind of used those existing definitions to craft the appropriate one that we felt was fitting for information blocking. So, we were trying. And the way I see it, we work within congressional intent insurers. I just want to make that clear.

Cynthia Fisher – WaterRev LLC - Member

Yeah. I just disagree with you because if I read it from Cures and I've asked others to look at it from Cures, we come out that it was broader and that there is a separate definition for protected health.

Mark Knee – Office of the National Coordinator – Staff Lead

I'm not understanding what is missing from our definition. What does this **[audio distortion]**? It has to be tied back. You can't have a definition that is just so broad that you can't even describe what it means.

Cynthia Fisher – WaterRev LLC - Member

But it already says at the end of the sentence – it already has it in there. It already has very clearly – where is it, health care to an individual. So, it already has it in there.

Andrew Truscott – Accenture – Co-Chair

Yeah. But that could mean literally any piece of information that's anywhere inside the ecosystem of healthcare. And is that what we think it should mean?

John Kansky – Indiana Health Information Exchange - Member

I have nothing intelligent to say because I'm sort of lost in the argument.

Andrew Truscott – Accenture – Co-Chair

Okay. Let's try to make some real world examples. It could mean the parking space number that's been assigned to you at MD Anderson to go receive your chemotherapy follow up.

Cynthia Fisher – WaterRev LLC - Member

Well, I don't agree with that. I don't see that –

Andrew Truscott – Accenture – Co-Chair

But that's the breadth. Well, no, because that's related to the provision of care.

Cynthia Fisher – WaterRev LLC - Member

No, it's not.

Andrew Truscott – Accenture – Co-Chair

It's not?

Cynthia Fisher – WaterRev LLC - Member

It's a parking space.

Andrew Truscott – Accenture – Co-Chair

But it's a parking space at MD Anderson to go for chemotherapy. So, that's why we're trying to attempt to put some boundaries around it to say actually no, it's not absolutely piece of information that goes on inside of the healthcare ecosystem. It's actually the stuff that specifically to do with the provision of your care to you.

Cynthia Fisher – WaterRev LLC - Member

Well, do you understand where that comes in to be problematic? I thought John, is it, John who said it very clearly, I just think it makes it very confusing about honoring the level of care

and accountability in the definition. It just reads of entanglement. And I'm sorry but I like to look for plain English. And it's entangled. And when I see entanglement, it makes me wonder why.

Andrew Truscott – Accenture – Co-Chair

You know I'm all about simplifying these as much as possible. I actually, honestly, thought this was simple. It's obviously not. When I look at having gone through exactly the same task elsewhere in other countries, people much smarter than me have gone through this. And they came out to something broadly similar purely because of all of the gotchas of saying what about this kind of care. No, that's not in scope. Okay. Then, you have to define it why that's not in scope. I haven't got a ready answer to this. I thought ONC actually gave us a pretty nicely thought to process about why and how they got to this definition. Although it sounds like, Morris, you don't agree with that. So, we kind of probably need to go back through it again.

Morris Landau – Office of the National Coordinator - Back Up/ Support

No, I want to be really clear. I agree with what ONC did. Everything that Mark has said I've agreed with. I want to be really clear about that. We were just explaining how we got to the definition. We started with the definition of health information and then, looked to HIPAA. And then, he showed you the process and then, included non HIPAA entities because we had to include EPHI. And we included that as part of that definition. So, I'm on the same page as Mark is. I want to make that very clear.

Andrew Truscott – Accenture – Co-Chair

Okay. I thought I heard you say that the piece asked that those ought to expect there might be a reasonable basis to believe the information can be used to identify the individual and is transmitted blah, blah, blah. I thought you said that actually, you thought that was unhelpful and confusing.

Morris Landau – Office of the National Coordinator - Back Up/ Support

No, I never said that. I hope I never said that.

Andrew Truscott – Accenture – Co-Chair

Okay.

[Crosstalk]

Mark Knee – Office of the National Coordinator – Staff Lead

I'm very confused now. I never heard Morris say that.

Andrew Truscott – Accenture – Co-Chair

No, no, no. You guys sound the same to me. I apologize. Kansky –

Morris Landau – Office of the National Coordinator - Back Up/ Support

No, no. I just wanted to get it on the record clearly that Mark and I are singing from the same sheet of music.

Andrew Truscott – Accenture – Co-Chair

It's clear. It's clear.

Morris Landau – Office of the National Coordinator - Back Up/ Support

I do have a question that I hope you can clarify for everyone is is the group including identifiable and nonidentifiable information as the recommendation? That's what I'm confused about.

Andrew Truscott – Accenture – Co-Chair

We're not there yet.

[Crosstalk]

Morris Landau – Office of the National Coordinator - Back Up/ Support

Okay. I will parking lot that. I'm sorry to get ahead.

Andrew Truscott – Accenture – Co-Chair

Cynthia, are you proposing that nonidentifiable health information? Because I have to tell you that something like –

[Crosstalk]

Cynthia Fisher – WaterRev LLC - Member

I didn't propose it. I just felt that the language, and I believe it was John, right, who brought it up, where it says any information that identifies the individual or with respect to which there is a reasonable basis to believe the information could be used to identify the individual and transmitted in electronic media, I agreed with John on his point that that was a flag. And it's confusing and it makes it hard to think about accountability.

John Kansky – Indiana Health Information Exchange - Member

Hang on a second.

Cynthia Fisher – WaterRev LLC - Member

And I agreed with John. And both of us weighed out on the other side of things that we thought a broader definition –

John Kansky – Indiana Health Information Exchange - Member

Wait a minute, wait a minute. Very important to make sure my point – this is John, by the way, to make sure I make my point clearly is what I'm suggesting is striking things after the comma before the words "and is". So, any information that identifies the individual stays in

absolutely. It's or with respect to which there is a reasonable basis to believe the information could be used to identify the individual is pointless and confusing. I know where it comes from. It comes from HIPAA. And it doesn't help eliminate the information blocking to include that in the definition of EHI.

Andrew Truscott – Accenture – Co-Chair

Okay. I, personally, this is my personal view and not the chair view, my personal view is that actually that constrains and limits the definition too much. And I actually think that puts a – I agree that it can confuse and maybe we need to finesse. However, I do think it limits the definition too much and actually, genuinely, puts it out of kilter with 21st Century Cures. So, I actually think the intent of Congress was to be more future looking than that limitation we'll put in place.

Mark Knee – Office of the National Coordinator – Staff Lead

So, just my interpretation of that clause is that it's a broadening clause. So, it says any other information that identifies the individual so that's pretty clear, identifies the individual. But then, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, in my opinion, Morris has more experience with the definition, but it seems to me that is expanding the breadth. And that seems to be – I know there are different views on whether it should be broader.

Andrew Truscott – Accenture – Co-Chair

I agree. Stop talking, I agree with you. I said removing it is overly narrowing it.

Mark Knee – Office of the National Coordinator – Staff Lead

Oh, okay. I thought you were saying that you –

Andrew Truscott – Accenture – Co-Chair

No, no, no, no.

Mark Knee – Office of the National Coordinator – Staff Lead

Okay.

Andrew Truscott – Accenture – Co-Chair

I've actually tried to broaden it ever further by suggesting instead of using the word can we use the word could because we are getting better and smarter about how we use data on a daily basis. And you and I cannot guess what's going to be happening in six months' time. However, what I'm hearing from this conversation is twofold. One is the centers, as is highlighted on the screen, is a bit confusing and we need to work out how we can simplify that and make that more plain English. Got that. The second, which I'm hearing, and it's a bit of a dichotomy I'm hearing is remove it. Got that. But also, we'd want to have this very broad because we believe that actually, Congress with 21st Century Cures was trying to broaden the definition of electronic health information or information that should be moved around.

And I have to say, Cynthia, I don't understand the point you made where you said that unless

it was identifiable, then, no, that was obviously out of scope because to make price transparency real means that we need to be able to share information **[audio distortion]** identifiable to an individual.

Cynthia Fisher – WaterRev LLC - Member

Okay. Well, I have the definitions, which I can provide for you from HIPAA. And HIPAA has three levels of definitions. And the first is the broadest one that refers to health information. Then, in italicized it talks about individually identifiable health information. And then, there's a narrower than that protected health information. So, my understanding of Cures was it was to broaden patient access to their data. And if you look at the management of their care and health in a broad sense of the word, patients are going to want to actually have access to that information from the broader sense rather than the narrowed protected health information sense. In Cures, it's outlined as a broader definition. That's our interpretation. So, that's where –

Andrew Truscott – Accenture – Co-Chair

Okay. When you say our interpretation, who are you referring to?

Cynthia Fisher – WaterRev LLC - Member

Well, basically, I have to consult with different players of legal counsel to just see where in the law does this come up and where is the Cures Act. So, that's how I'm looking at it. That's just –

Andrew Truscott – Accenture – Co-Chair

Okay.

Mark Knee – Office of the National Coordinator – Staff Lead

And just to address Cynthia's point, and I think it's a good one, and it sounds like we're on the same page because in our definition, one is electronic protected health information and then, we take another step much broader than electronic protected health information and any other information that identifies the individual, blah, blah. So, I think it sounds like we're on the same page. I'm still just not clear what our definition – how we're narrowing the scope beyond where Cures wanted us to go.

Cynthia Fisher – WaterRev LLC - Member

Well, like I gave you examples before, if you want electronic digital health information that helps the patient that's in the provider's care block that's going to help the patient in the future better manage their care and their comparative and look at pricing and look at comparatives, you would want a broader than just to the individual at that moment because you would want the patient to have a choice for breadth.

Andrew Truscott – Accenture – Co-Chair

Why does this limit that though? Why does that stop that happening?

Cynthia Fisher – WaterRev LLC - Member

Because you're saying that it's identifiable to the individual and there maybe health information electronic that's not specific to be identifiable to the individual that can be provided to the individual.

Andrew Truscott – Accenture – Co-Chair

So, when we often said broaden it out, you said no, that wasn't the intent. And you went back to the HIPAA definition, which does constrain it. I'm really confused as to what you're looking for us to have happen here.

Cynthia Fisher – WaterRev LLC - Member

Okay. I think you have gone beyond protected health information. And I just think that going beyond the protected health definition you've gone into a narrow field of protective health information, which wasn't consistent with Cures. That's just how we see it.

Andrew Truscott – Accenture – Co-Chair

But it says and. But it says and. So, you've got the electronic protected health information definition and. So, absolutely, you can only be going beyond that. The thing is incremental, it's additive.

Cynthia Fisher – WaterRev LLC - Member

Right. Okay.

Andrew Truscott – Accenture – Co-Chair

But you're saying you've taken legal advice that says no, that's not the case. So, I'm just confused as to how someone is reading this different to how we're reading this.

Cynthia Fisher – WaterRev LLC - Member

Well, where do you define electronic – you're saying electronic protected and, but that's still limiting to the identification of the individual in the and. What you have there is narrow. So, electronic health information is already – protected health information is already more limited than individually identifiable.

Andrew Truscott – Accenture – Co-Chair

But if you think of it like Venn diagram, you've got electronic protection health information as defined in HIPAA and I've got to remodel this and we might have to put investments to HIPAA. And then, you've got another circle, which is information that can identify the individual. And you've got another circle, which is information which could potentially be used **[audio distortion]**. And that means you've got an incremental definition of the world of information, which is **[audio distortion]**. Am I wrong?

Morris Landau – Office of the National Coordinator - Back Up/ Support

This is Morris. I think the question on the table as I'm hearing it because I'm looking at all three definitions right now is, I think, for the group to answer is should nonidentifiable health information be included in that definition? Because the nexus that is discussed in the

definition is any other information that identifies the individual or there's a reasonable basis to believe that. And what I'm hearing is one side saying that it should be broader than that. That information should not include a nexus to identifying the individual. I'm just trying to capture what I think the question on the table is. Should health information be nonidentifiable? Is that a fair characterization of your concern?

John Kansky – Indiana Health Information Exchange - Member

This is John. I don't even know what it means to block nonidentified information. Who are you blocking it from if it's not identified?

Morris Landau – Office of the National Coordinator - Back Up/ Support

I'm just raising the question.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Yeah. I could give you some use cases for that, which has a PHI or what we call PII redacted or massed. But if you would provide that data to a provider organization, and they have PPT codes and dates and other things of procedures, and they combine that with their own data, it is with reasonableness that they might be able to reidentify the individual. So, that's an example of even with identifiable information not provided, depending on what other data they have and how they're combining it, you could reidentify the individuals. That's the concern. But I'm not understanding Cynthia's question and what she's asking for here. So, I'm just providing that detail.

John Kansky – Indiana Health Information Exchange - Member

Thank you for that example, Sheryl. This is John. What you just said, that's a HIPAA concern. But can anybody give me an example where information that could – never mind? We're going in circles. So, I'm not aware of any information blocking examples on the planet ever of anybody saying you didn't or weren't willing to disclose the information that could have reasonably been used to identify somebody. It's information that identifies somebody that's being blocked. And we need to fix that. To Morris's question, I don't even know how you know what information has been blocked if it's not identified to somebody.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Although I can't provide a specific use case, I can provide let's say a fictional example. There are organizations that have rules that basically limit the ability to share data, even deidentified data as a result of membership or agreements that take place with those entities. So, there may be NABs that consider that information blocking because they would like to receive data, deidentify that data, and then, reuse it to create a commercial product. And when they're not allowed to do that through a BAA or arrangement, they might consider that information blocking. Now, the question to this group is would we consider that information blocking.

And that is a real thing that happens today. I deal with it every single day because as a company, all of the payers are asked to provide data to consultants and vendors who are actually not our vendors or consultants but are vendors or consultants of our employer

groups. So, the relationship is already a third party one. But there's a constant debate in that arena over what is considered allowable with that data. And most of the payers are in agreement that the data can be shared for the servicing of anything that has to do with the plan. But with the marketability of health data, all of the vendors and consultants are looking at other ways of using that data to create commercial products. And would that then be considered information blocking?

The clearinghouses would tell you it does because, in today's world, they want to use data we provide to them through our EDI transactions and be able to remarket that to other areas. And say no, you're already covered with an agreement or paying the money to do this work. Just because you're a holder of the data and you're transmitting it to us, you shouldn't be able to use it, even if you deidentify it. Those are a couple of scenarios.

John Kansky – Indiana Health Information Exchange - Member

So, that was helpful. And this may not be a popular comment. I think if you take into this regulation nonidentified information, there's a very good chance of destroying any company whose business model is based on the value of data, which is not the intent of 21st Century Cures.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Right. But I think we can't be completely quiet to it either because the issue that we're all going to be addressing if it's not clear which side of the line that falls under, clearinghouses have already put a bill in Congress proposed three or four times. So, they're one of the forces that we need to deal with. And they believe they should be able to do anything with that data as long as they under HIPAA deidentify the data. So, I don't know if our patients would like to find out that a third party we've contracted with can do anything they want with their data, even if it's deidentified data. And deidentified according to whom? Part of the problem we're trying to solve in the payer organization today is there are multiple methods. There's the statistical method.

And then, of course, there's the HIPAA prescribed method. Well, in the statistical method, now there are tools that have been created to statistically deidentify data. So, that creates even more danger to any organization that's holding that data. And what if it's a bad actor that gets into it? So, I don't think we can be completely quiet to it.

John Kansky – Indiana Health Information Exchange - Member

But this regulation is not to protected data, it's to free data.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

I understand that. But we need to free data in a way that we're not allowing unintended consequences to occur with that data because then, we're putting patients' data at risk.

John Kansky – Indiana Health Information Exchange - Member

I agree.

Cynthia Fisher – WaterRev LLC - Member

I think the other example is pricing. So, part of the electronic record in the future will be pricing. At the point of care when the patient decides where they go for their next step and the opacity is removed, one could argue that this could be utilized as a tool to not deliver on pricing as part of the electronic record because it's not individually identifiable. So, I think, in a patient and physician, we talked about the impact of that in our session yesterday. And I think, if a patient can get something at one-tenth of the price, and they can see that price while they're at the point with a physician in deciding the modality of therapy or their care as it affects their wallet and their wages and their health plan, these are really important decisions because financial health affects physical and mental health as well as burdens to the individual and the family.

So, I just want to make sure that we're not narrowing this so much so that it can be used as a lack of compliance on delivering the best quality care at the lowest possible price in the future to our American public.

Andrew Truscott – Accenture – Co-Chair

I think as I listen to the discussion, everything we're talking about is an augmentation of a definition. It's an increase in scope. And I believe what I'm hearing is that whilst we want to make the scope as large as possible, we also need to make it as large that it's sensible. And we are struggling with where to lay that boundary down because that boundary is not one that's easily **[inaudible] [00:57:11]** by the term identifiable or not. Is that a fair capture of the discussion point?

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

I think it does.

Cynthia Fisher – WaterRev LLC - Member

Yeah. Thank you, Andy.

Andrew Truscott – Accenture – Co-Chair

No worries. And changing gears but coming back to the point, a comment that was made over the last couple of days is why on this task force are we actually trying to define or redefine or actually come up with regulatory text. And it's for precisely this reason that we are because we want the final outcome of this hopefully with our recommendations to be easy and simplified and understandable. But also, ONC has done the right thing. They've stood a definition based upon what's gone before. And we, in our role, are saying actually yeah. We get what's come before. It's different now. That's why we're having this discussion. And I fully appreciate it's not an easy discussion but this one is kind of fundamental to absolutely everything else.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Yeah, I agree, Andy. I know this isn't an easy thing to discuss. And I don't know if Carolyn will be happy with the ending definition. But at least I don't know if you can see what he has up here, but what he has up here, I believe, will work.

Andrew Truscott – Accenture – Co-Chair

You believe it's the what, sorry?

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

No, I think this will work.

Andrew Truscott – Accenture – Co-Chair

Okay. Cynthia, I hope you can read it, if not we'll read it out to you. But my struggle with this is, okay, I get it. I actually kind of understand it. How would we remotely enforce it and police it? And my biggest fear for everything that eventuates with these regulations is in three years' time, there's a challenge to them and that changes the value of any of them because there's some kind of **[audio distortion]** that says that was just **[inaudible] [00:59:43]**. It was impossible. Actually, the whole thing is now unfeasible.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

So, is that what you're suggesting is that what we've come to now is something that's not implementable?

Andrew Truscott – Accenture – Co-Chair

I'm trying to think it through. As soon as we broaden out and say it's not just identifiable, but it's all data product that's derived from identifiable patient data, I need to think this one through. It's, obviously, difficult. Maybe it's procedural enforcement.

John Kansky – Indiana Health Information Exchange - Member

Andy, it's John. I'm saying –

Andrew Truscott – Accenture – Co-Chair

Help.

John Kansky – Indiana Health Information Exchange - Member

I'm not going to help. I'm saying much less because I'm not trying to broaden the definition, I'm trying to make it clearer and simpler for that very reason that I just keep – I apologize that I'm just beating the same drum over and over is your challenging whether this is regulation. I don't know how this implemented or enforced or understood. And there are plenty of jokes in the margins of the meeting in the last couple of days about consultants and lawyers getting rich when this comes out. And I think that's because we need to be more focused on clarity and simplicity. Look, it comes down to this.

I thought, and this is John's opinion only, that the need for this regulation was called out in 21st Century Cures because there was a minority of bad actors or bad situations that kept information from flowing. And we needed regulation to say that those things were against federal regulation. And it seems to have turned into we need to unleash an ocean of data with no exceptions. And we've just gone way overboard.

Andrew Truscott – Accenture – Co-Chair

John, I just want to talk directly to that. I'm trying not to be a bad consultant in the middle of all of this. I think there's a bit more to it than just that. I think there's also a recognition in 21st Century Cures that the information ecosystem of healthcare is rapidly changing. And it needs to be appropriately accessible that information does to all parties for the improvement of patient care. It shouldn't be something, which a minority of organizations are able to monetize and capitalize upon. It should be almost a common good. And the –

Mark Knee – Office of the National Coordinator – Staff Lead

I'm sorry, Andy. Go ahead. I thought you were done.

Andrew Truscott – Accenture – Co-Chair

No, go on. No. I put in a large comma. You can jump in if you want.

Mark Knee – Office of the National Coordinator – Staff Lead

No, you go on. I insist.

Andrew Truscott – Accenture – Co-Chair

Okay. And then, the other part of this is we keep coming back to this price transparency thing. That information is **[audio distortion]** shared. **[Audio distortion**] and that's not a minority doing that, that's the vast majority. And if we are truly going to make a dent into the economic inconsistencies across healthcare, the only way of doing that is to enable transparency of price. And that's done by sharing the pricing information. That's a period point.

Mark Knee – Office of the National Coordinator – Staff Lead

Okay. I'll just jump in just because I want to be clear about ONC's intent. And John, I hear your point. I'm not sure if it was –

Cynthia Fisher – WaterRev LLC - Member

[Inaudible] [01:03:38].

Mark Knee – Office of the National Coordinator – Staff Lead

Anyway, John, to your point, I'm not sure if you were saying, based on the conversations we're having to make it broader or ONC's proposals, but I just want to be really clear. Where we were coming from is that we've heard from stakeholders pretty broadly that there were bad actors and bad actions going on interfering with access exchange and use of electronic health information. And we tried to address that in a fair way. And that's why we implemented the exceptions that Congress asked us to do. So, to your point, that's not our intent to make an overly broad regulation that catches even actors who are doing the right thing or trying to promote innovation. We tried to make it so that we created the right balance. If we missed the mark then, we want to hear from you. But I just wanted to be clear about ONC's intent.

John Kansky – Indiana Health Information Exchange - Member
Thank you.

Mark Knee – Office of the National Coordinator – Staff Lead
I didn't mean to kill the conversation.

Andrew Truscott – Accenture – Co-Chair
That's okay. I think all of us are thinking.

John Kansky – Indiana Health Information Exchange - Member
Well, I'm trying to avoid reacting to Mark's comments with comments that are more related to exceptions than the topic. And I have ample opportunity to make my comments through the comment process. But I think there's plenty of – it's just impossible. Mark, were you in the room when I did my whack-a-mole analogy?

Mark Knee – Office of the National Coordinator – Staff Lead
Oh, yeah, I was. I liked the whack-a-moles. I thought that was good.

John Kansky – Indiana Health Information Exchange - Member
Okay. So –

Andrew Truscott – Accenture – Co-Chair
Okay. So, let's go to the subject at hand. If we're going to simplify this, how do you propose we simplify this whilst also putting in place the boundary, which I think we all acknowledge needs to exist somewhere?

John Kansky – Indiana Health Information Exchange - Member
My suggestion would have been to do the definitions like we have and debate them like we are but to write the rest of the regulation not in terms of exception but in terms of carefully and completely and thoroughly and broadly describing bad information blocking instead of trying to define the few exceptions that aren't.

Andrew Truscott – Accenture – Co-Chair
Okay. But this is a definition of what is electronic health information within the boundaries of this regulation. So, that's an inclusive definition. It's not a definition of what constitutes bad practice. It's not a constitution of acts. It's a definition of what is electronic health information and what information and data are we talking about. So, that's what we have to define here.

John Kansky – Indiana Health Information Exchange - Member
I've already said all I have to say on that.

Andrew Truscott – Accenture – Co-Chair

I'm very confused. Are you actually saying we don't even want a definition of electronic health information in here?

John Kansky – Indiana Health Information Exchange - Member

No, no, no. I'm not trying to move any – all right. You guys asked a broad question. With respect to what we're supposed to be talking about on this call today, I think you're doing the right thing. I may not agree with the definitions but I'm shutting up because there's consensus being reached. And then, the clause that I find confusing is going to remain in for reasons that have been expressed. So, I don't have anything else to say about the definitions. The definitions are absolutely necessary. They're the basis of the regulation. You have to define the actors. You have to define electronic health information. Fine. My only comment was that the whole regulation is written in photographic negative and it should be in photographic positive.

Cynthia Fisher – WaterRev LLC - Member

Can I just say I agree with that because I'm confused, too? And the thing is that we've had so much struggle with it just us. And then, I look at the word could, information could be used. Could is sort of ambiguous because it's sort of like who defines whether it's can or could? Is there an ambiguity with that? And I guess I think where I come out is I think this is such a critical point for real clarity. And then, everything else is triggered from this on information blocking. And if we're getting this hung up, think about anybody else who is trying to be held accountable or trying to see how they are complying. So, I guess that's where I end up, too. So, I would support I think it was you, John. Wasn't that you who just spoke? I agree that I think clarity would be really helpful here.

Andrew Truscott – Accenture – Co-Chair

Okay. Let's ratchet this back then. Do we believe that the definition of electronic protected health information that we get from HIPAA is sufficient for the purposes of 21st Century Cures as a group?

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Can you ask that again, Andy?

Andrew Truscott – Accenture – Co-Chair

Okay. It's either stunned silence or I've walked away from the phone and now, I'm going to try and find out what the heck. Do we believe that the definition of electronic protected health information as defined in HIPAA is sufficient for what we do in 21st Century Cures with electronic health information? Actually, they're synonymous with each other.

John Kansky – Indiana Health Information Exchange - Member

My answer is sufficient but unnecessarily confusing. But I understand that others don't necessarily agree that it's unnecessarily confusing. You think it's necessarily confusing. Hence, I'll go along and consent.

Andrew Truscott – Accenture – Co-Chair

Okay. I don't want to go along. I want a discourse because we're halfway through so we've still got a long way. And this is almost the most important thing we're talking about on the task force. This regulation as it's currently drafted, obviously, refers back to HIPAA. And right now, it's incorporating by inclusion the definition in HIPAA. John, I think you're saying that definition is unhelpful and actually we should be seeking to have a new definition.

John Kansky – Indiana Health Information Exchange - Member

No, no. No. I think it's fine and it's close. So, I've learned that when people don't agree with you, sometimes you might be wrong and you should shut up. I'm surprised that it doesn't resonate with people that if you have one regulation that was designed specifically to protect information from being shared and another to specifically call out information not being shared that there might be unintended consequences of using the same definition for both purposes.

Andrew Truscott – Accenture – Co-Chair

That's a good point, a very good point.

Cynthia Fisher – WaterRev LLC - Member

That's the best thing I heard all day. Thank you for being so clear.

John Kansky – Indiana Health Information Exchange - Member

I'm going to hang up now.

Andrew Truscott – Accenture – Co-Chair

Don't you dare. I'll be coming to Indianapolis and sobbing. But if I take that one step further, if we're trying to unpick the restrictions, and let's be fair, all of us have come across citations of HIPAA as a reason for information blocking. We've come across that time and time again. So, if we're to say we need to unpick the consequences of HIPAA to prevent information sharing, then, wouldn't it be a good starting place to include all of the information that's encapsulated by HIPAA inside of that?

Cynthia Fisher – WaterRev LLC - Member

Okay. Andy, just for clarification here, I think I just added in because I asked my assistant to add into the screen the three levels of HIPAA definitions. The first HIPAA definition is the broadest, which basically describes health information.

Andrew Truscott – Accenture – Co-Chair

I've got no idea where you've added something. Where have you added something?

Cynthia Fisher – WaterRev LLC - Member

Okay. Maybe she didn't put it in.

Andrew Truscott – Accenture – Co-Chair

No, it's not in the document. It's above the recommendations line. Okay.

Cynthia Fisher – WaterRev LLC - Member

She went through just the three levels of definitions.

Andrew Truscott – Accenture – Co-Chair

Who is adding this, Cynthia?

Cynthia Fisher – WaterRev LLC - Member

I asked my assistant to add it in. So, let me get – we're on a different floor. So, I'll text her to do that. But my point is is that John's point is very, very clear. Protected health information has been misused and even abused to keep within the FISA and been problematic. And like you've just said, we've all experienced that. So, why are we using protected health when we want the broader sense of the patient's health information? I think John said it so clearly. And I'll send you the three levels of definitions within HIPAA, the broader one and then, the very, very narrow one.

Andrew Truscott – Accenture – Co-Chair

I understand that point. I didn't think that was the point John was making. I thought John was suggesting that why are we using a definition that's used as a restricted definition in something we want to be more inclusive and permissive. The point was I was going to suggest, actually, the definition from HIPAA is a subset of the definition that we appear to be looking to trying to address inside of Cures. I am not sure whether the three levels inside of HIPAA are helpful in this discussion given that, by inclusion, we've already got them all included in the scope inside the current drafting.

Mark Knee – Office of the National Coordinator – Staff Lead

And this is Mark while we have a quiet moment just to chime in very quickly. I guess I definitely see your point, John. So, the thing's I'm thinking are 1) I still am not clear where our definition misses the mark or what recommendations this group could make. And I'm sure there are some.

John Kansky – Indiana Health Information Exchange - Member

So, I have a very clear suggestion that I think was deflected for reason by others, which is I think the definition in the reg is pretty good with the exception that after the comma, the phrase that was inserted into HIPAA so that people couldn't – it was closing a loophole in saying we're going to protect additional information by saying information that could reasonably be believed to identify the individual. We're going to protect that information, too, so you can't cheat when we're telling you stuff you cannot share. So, if we were to use this definition to tell people what they must share, I think that that phrase is unnecessary and confusing. Others disagree and that's okay. So, I won't make that point a third time.

Mark Knee – Office of the National Coordinator – Staff Lead

I'll let others talk to that point. You all can decide that. My other point about HIPAA, and I'm not claiming to be a HIPAA expert. Morris is the HIPAA expert on the team. But the way I

think about it is we do make a clear distinction, like you said, that HIPAA's goals are different than our goals. And the conduct that we're talking about should be viewed differently. My point is I don't know that there's a de facto – it shouldn't be understood that the definition of health information within HIPAA couldn't be used for our purposes just because the concept they're talking about in HIPAA is differently regulated.

John Kansky – Indiana Health Information Exchange - Member

Okay. Then, let's take that. And, Andy, here would be maybe possibly maybe another intelligent comment from Kansky. Then, we should absolutely use the definition as verbatim from HIPAA so that we can tell the entire industry the definition of electronic health information is as defined in HIPAA. And then, every lawyer on the planet doesn't have to get paid for reinterpreting it. And the industry knows what we mean. That will help.

Mark Knee – Office of the National Coordinator – Staff Lead

And I'll just pull up the diagram so we can show what we added there just so we're all on the same page. From our perspective, these three changes are significant and necessary. That's just ONC's position.

Morris Landau – Office of the National Coordinator - Back Up/ Support

This is Morris. I want to be really clear about just clarifying. I hate going back to the HIPAA world. So, HIPAA, as we all know, only applies to four basic entities. There are covered entities, which are healthcare providers, healthcare clearinghouses, and health plans. And then, it applies to their business associates. So, when you say we're going to apply the HIPAA definition, the HIPAA definition only applies to those entities. As we all know, in Cures, and particularly the information blocking, HIPAA would not necessarily apply to a health information technology developer exchange or network, unless they're a business associate.

John Kansky – Indiana Health Information Exchange - Member

Right. But now, you've jumped to actors.

Morris Landau – Office of the National Coordinator - Back Up/ Support

Right. But here's my point. When you say we're going to apply the HIPAA definition, I just want to clarify that the HIPAA definition only applies, by statute, only applies to those entities.

[Crosstalk]

Andrew Truscott – Accenture – Co-Chair

No, Morris, you're the expert but HIPAA applies to only those entities. The actual definition is just a definition of scope in terms of data scope not of actor scope.

Morris Landau – Office of the National Coordinator - Back Up/ Support

Right. But the regulation only applies to those entities. I just wanted to clarify. I just wanted to make that clear. And so, you can use some of the same language, but I just wanted to clarify how you lay it out. What we tried to do is have the definition of electronic protected

health information. We used that type of language, and we used it for non HIPAA entities. I'm just trying to give you some context without hopefully not confusing everyone.

Mark Knee – Office of the National Coordinator – Staff Lead

And just one more point to put a finer point. I agree with what Morris said. I think, John, in essence, what we're doing on my read is kind of what you're asking us to do. We're using established law but understanding that it's not apples to apples what we're doing and what they did. So, we tweaked it as we show in Step 3. So, even if maybe the end result isn't exactly the way you want it to me, I think our approach is generally what you're asking us to do.

John Kansky – Indiana Health Information Exchange - Member

Okay. So, let's take those three points individually to make sure I understand. The first one does not seem to be a change to the definition of EHI. EHI may be provided directly from an individual or from technology that the individual has elected to use. That doesn't seem to be a change to the definition of electronic health information.

Michael Lipinski – Office of the National Coordinator - Staff Lead

I just wanted to let you know, this is Michael Lipinski. I joined the call. And I don't want to interrupt your dialogue here. But I did want to note that I think it's the intent of ONC to provide a presentation on information blocking to monitor the whole task force. I wanted to confirm that. So, I know you guys have broken it down into Workgroups. And we will focus primarily on that presentation on all of the definitions that we've put forth. So, it's good that you guys are talking about it. But I wanted to let you know we're going to let the broader task force –

Andrew Truscott – Accenture – Co-Chair

Okay. So, just as an aside by Michael that will be a **[audio distortion]** limited Q&A but not discussion. And the Q&A will be focused upon understanding the wheres and the whys not litigating out what it should really be. This Workgroup is litigating what **[audio distortion]** because we just want to understand how you got here and work out –

Michael Lipinski – Office of the National Coordinator - Staff Lead

Yeah, I just wanted the awareness on that. And it is new, to that point that was just asked. That part is new to the definition. Mark, sorry, I joined late. Did you show them the full definition itself at all, the health information definition from the Public Health Service Act, which is a crossroads from the Cures, which is the basis of the HIPAA?

Mark Knee – Office of the National Coordinator – Staff Lead

Well, I have the slide up but I haven't pulled up the definition but I can do that. I have that slide.

Michael Lipinski – Office of the National Coordinator - Staff Lead

I'm going to hand it back to you. If anybody has any questions, I'll try to jump in and answer them.

Andrew Truscott – Accenture – Co-Chair

John, I'm going to put you on the spot now. Ignore all of the words, which come in the regulation, ignore them all. What do you think the definition of EHI should be? John, are you still there?

John Kansky – Indiana Health Information Exchange - Member

Oh, sorry. I've been talking for like 20 seconds.

Andrew Truscott – Accenture – Co-Chair

I had put it down to you being very, very thoughtful.

John Kansky – Indiana Health Information Exchange - Member

I wasn't. I was just yammering. Maybe I'll do it better the second time. I'm actually trying to argue that the definition that we have is pretty good and shouldn't change – so to answer your question, I think, electronic health information means electronic protected health information as defined in HIPAA is a pretty good start. We could probably stop there. But others would disagree. Any other information that identifies the individual and relates to their past, present, or future health condition maybe I would stop there. It's just so much simpler.

Cynthia Fisher – WaterRev LLC - Member

Well, if you stop there then, you are not honoring the HIPAA definition, which has a whole a second part to it where health information –

[Crosstalk]

John Kansky – Indiana Health Information Exchange - Member

I'm just answering the question Andy asked me.

Andrew Truscott – Accenture – Co-Chair

And that's fine. So, now, Cynthia, the same question. Where do you think we should go to? It sounds like you'd like to build upon the excellent start that John made.

Cynthia Fisher – WaterRev LLC - Member

I'm just going to put in the definitions so we have the definitions. And then, you guys can take a look at that. I'm going to put it under the bottom of EHI. Yeah.

Andrew Truscott – Accenture – Co-Chair

I'm sorry, what are we supposed to be looking at now, Cynthia?

Cynthia Fisher – WaterRev LLC - Member

I was just putting in the definitions from HIPAA just so people have them.

Andrew Truscott – Accenture – Co-Chair

Where are you putting them in?

Cynthia Fisher – WaterRev LLC - Member

I guess under the EHI and the talking points. Right under 171.102 at the bottom of –

Andrew Truscott – Accenture – Co-Chair

No, there's nothing going in there.

Cynthia Fisher – WaterRev LLC - Member

I'm trying to get my Wi-Fi to work here. Hang on. Okay. Just move on to another person because I'm just trying to get the Wi-Fi to get it in.

Andrew Truscott – Accenture – Co-Chair

Okay. Have you got some thoughts here? Of have you checked out in disgust at the level of discourse this has caused? Sheryl?

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

I am still looking at it. I tend to agree with making it simpler rather than more complicated. But I don't know where Cynthia's references are coming from. So, it does say in the definition of health information on HIPAA relates to the past, present, or future. But I don't know if we should be restating what's already in HIPAA because I do think that that's what partially is confusing it. So, if we're basically stating that we are using the definition – of course, what's defined in HIPAA is health information, not electronic health information. And so, thereby it is different. But if we're trying to say that electronically transmitting health information as defined by HIPAA then, I think that's the way we should do it versus giving a new definition or redefining it.

What I've seen already is that we are saying that based on what was defines under Cures Act. But when I look at the Cures Act, I don't really see the definition outright that we're talking about. I see it referred to in a lot of places but I actually couldn't pull up the definition itself. And that's, unfortunately, what I'm trying to do here in the background because I do believe that there is going to be a lot of lawyers making money off of this. And to me, as clear as we can be that doesn't create another chasm for disagreement is what we need to do. And I'm not sure we're there yet.

Andrew Truscott – Accenture – Co-Chair

I agree we're definitely not there yet. And I've been through the 21st Century Cures trying to come up with what my personal position is as well as one to help the group with. I think there are 23 separate references to electronic health information in Cures. And every single one of them is subtly different in the utility. So, it's difficult to come up with a solid definition of what it is that's not got multiple faces because there are multiple ways to get used. I must confess, if we circle around the HIPAA definition – let's just say we say it's the HIPAA definition. That's what we're going to go forward. That gives us a scope not resounding

Morris's comment that HIPAA has applicability constricted to just certain access. But let's just say we say it's this definition of data across every actor we can think of.

I'm sitting here going to myself doesn't that address the price transparency component that all of us believe is key. I know it's probably the simplest but it's not –

Cynthia Fisher – WaterRev LLC - Member

It's statutes of 96. And I think ONC did a good job to refer to the health information as it's stated in the law. So, the question that I have and maybe it's an ask of ONC because ONC is looking at this. The question is as you look at it, the broad sense and then, there's individual identified and then, there's protected, and if you're going to get information to the patient, if the goal is to get the patient information and inform, wouldn't you want to, like Andy's question of price transparency – but it's not only price transparency. There is other supportive health management information that might not just be unique to the individual. So, I guess I would push to say what is the best way with the least confusion and honoring existing law, which is clearly defined in a very well way that's been functional health information.

Andrew Truscott – Accenture – Co-Chair

By price transparency, I was trying to come up with a concept, which all of us could agree upon should be included. That was all.

Cynthia Fisher – WaterRev LLC - Member

I guess I'd like to just look to ONC also to consider that.

Andrew Truscott – Accenture – Co-Chair

Cynthia, the purpose of this task force and the purpose of this Workgroup of this task force is to provide ONC with our recommendation not to re-express ONC's own deliberations back at them. And if actually what we're going to say is we agree with ONC then, we should just say we agree with you.

Mark Knee – Office of the National Coordinator – Staff Lead

And from ONC's perspective, the definition that we put out there, it's our position that that is a clear definition that it represents an understanding of using other laws but also tweaking it a bit to make it fit for the information blocking context. So, our position is that this is the definition we want to move forward with but we welcome recommendations and suggestions.

Michael Lipinski – Office of the National Coordinator - Staff Lead

This is Mike Lipinski of ONC. So, when we talk about using other laws, we just need to be clear about how the legislative practice works. And I won't spend time today talking about canons and statutory interpretation and so forth. I'll talk a little bit about that tomorrow. But the Cures Act, particularly related to this, amends the Public Health Service Act just like the HITAC Act amended the Public Health Service Act. So, that definition of health information from where we started as we describe it in the rule is in the Public Health Service Act. It is the

same. It is to be a cross reference to the Social Security Act. So, we start with taking the definition that's already in the act. Again, so while it's not specifically in the Cures Act, the Cures Act actually says, if you read the instructions in it, amend the Public Health Service Act to add these provisions such as information blocking.

So, we then go to the definitions that are already in that act as being amended. So, that's how we started with health information. Obviously, there isn't a definition of electronic health information. So, we look to how would we best interpret it electronic. So, where has that been done before? HIPAA has done that before or I should say OCR via their interpretations for the Privacy and Security Rules. So, that's where we went to next in terms of finding that definition of electronic media. But that definition of health information is the same basis for HIPAA. So, we haven't really altered it other than the ways we've pointed out, which is our interpretation of payment information including price information in that making that clear that that is part of our reading of the statute about future and payment. And then, we've added individuals.

So, if you had that full definition up, it talks about where the information comes from. I don't have it up in front of me right now but from employers, providers, and exchange. And we want to make clear that the information can come from individuals and still be considered EHI. So, that's the reason why we focused on that as well. And then, the other piece that is for consistency because as I think I heard a lot of you already comment on, where would the market be and make sure that they understand this and there isn't confusion between definitions. We focused or at least proposed that deidentified information would not be considered EHI. However, that's, again, as all parts of the proposal, up for public comment. So, we just wanted to try to draw attention to the pieces that were maybe unique and different to stakeholders with our rule making. I'll stop there.

Andrew Truscott – Accenture – Co-Chair

Thanks for that, Mike. And I haven't said you weren't going to do what you were, and you did. But that's okay, it was helpful. Thank you. So, Sheryl, Cynthia, John, where do you want to go? Where do you think we can go, at this point? If we say nothing and are mute on this then, what ONC has drafted as far as we're concerned will be standing. It sounds like we want to make a modification. And the consensus of this group is to propose some modifications. John, saying your piece and stopping talking, no, I think certainly there's a shared feeling across the three of you that we do want to make some changes. So, we're going to need to. Rather than just saying we don't like it, we're going to have to come up with something we do like.

John Kansky – Indiana Health Information Exchange - Member

Andy, what I tried to describe of the situation is I think, and I don't want to speak for others, but I think I would go for as similar as possible to HIPAA because the industry understands what that is and will know how to apply the definition. That would be Choice B. Choice A is simplify it by taking out ambiguous, confusing phrases so that it would still be identified by the industry. But I understand that others have concerns that that would lose important meaning or leave out information that isn't intended to be left out. That's not my view but that's okay. And then, I hear others who I would think want to pull it in a different direction,

which is broader or vaguer so as to not miss anything no way, no how. And that's not an opinion that I share. So, I would go with simpler than it is proposed or as similar to HIPAA as possible.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Yeah. I would vote for as similar to HIPAA as possible because for clarity purposes in terms of implementation and down the road in terms of disagreements, I think that's going to end up being something that's more easily implementable.

Andrew Truscott – Accenture – Co-Chair

And for clarity purposes, does that mean that we need to regurgitate the HIPAA definition here because there is a group of entities that haven't got exposure hitherto and rather than sending them off to go and look in another legislation and potentially get it wrong, frankly, the outcome we want from this is that everyone gets it and everyone does not that we set up a whole mechanism for going and – egregious lawyers and consulting fees, which I think is where John was going. So, do we actually take the HIPAA definition and restate it here?

John Kansky – Indiana Health Information Exchange - Member

To the extent that we can do it by reference, which I think there's a degree already in there.

Andrew Truscott – Accenture – Co-Chair

It's a statute. We can cut and paste it.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Yeah, I agree. I like that suggestion.

Andrew Truscott – Accenture – Co-Chair

Okay. And so, that first four words in Point 1 would actually become whatever the HIPAA definition is. How do you guys think we should handle those other information types that are not covered by **[audio distortion]**? An example of which would be price transparency.

John Kansky – Indiana Health Information Exchange - Member

And I just pulled the slide up again that shows the three bullets of the three refinements that we made.

Michael Lipinski – Office of the National Coordinator - Staff Lead

Mark, does that second bullet not basically say that deidentified information as defined in HIPAA is excluded?

Mark Knee – Office of the National Coordinator – Staff Lead

Sorry, there were some negatives in there. I think what we're saying is that – Mike, do you want to go ahead?

[Crosstalk]

Andrew Truscott – Accenture – Co-Chair

Someone said yes, and I say yeah, I agree that's what it says.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

I almost think we should take that out because when you go back to that reference anyway, it's basically restating what we've already stated. So, I think EHI should be the first and the third bullets under No. 3 but not necessarily the second bullet because I think that that becomes problematic even from a patient perspective. They don't know what that means. And likened to them that would mean what if any wearable or whatever that you provide data to takes your data and then, develops information related to outcomes? I know there's one service that's actually taking financial records and then matching them with other activities that a person performs to determine whether or not they're a likely potential risk for opioid use.

None of the records they're gathering have anything to do with their health situation. It has to do with their online behavior. So, that is data that would be identifiable. But if you were to take the identifiable data out of it and say all of the people with these behaviors are going to be more likely to be in this risk model then, you've got people who are going to be judged by something that they don't know that they've actually contributed to. And they have no knowledge to state it's been used that way. So, I don't know if this is helpful to them here.

Andrew Truscott – Accenture – Co-Chair

Okay. So, I just want more distinction between data which is nonidentifiable and never has been and data which has been deidentified because it once was.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Right. But I just don't think it helps clarify what we're saying here. So, to me, I'm trying to look through the different use cases and say does that second bullet help to clarify or does it actually just make it more confusing.

Andrew Truscott – Accenture – Co-Chair

Okay. So, that second bullet point, it says EHI does not include health information that has been deidentified. It says to me, in that bullet point, EHI does not include data that was once identifiable and has now not been because it's had the identifier removed. And that hasn't actually made it distinctly into the draft yet. And I can't see where that was actually in the original regulatory text let alone our updates.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Yeah.

Andrew Truscott – Accenture – Co-Chair

So, my question is whether we think that EHI should include data, which was once identifiable and is now not because it has been deidentified. That's a question. And the second question is whether EHI should include health information that was never

identifiable.

John Kansky – Indiana Health Information Exchange - Member

No and no.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Yeah. That's where to me you're getting into the area that's going to require years of attorneys to fight out. On the basis of identifiable data that's been deidentified, again, if it's deidentified under HIPAA, even under the rule that's referenced on No. 2, if that data can be combined with other data, it can be reidentified.

Andrew Truscott – Accenture – Co-Chair

Okay. But the point is that data was once identifiable. So, we could actually say EHI also includes information, which was once identifiable. We could say that.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Right. But, again, it may then create – all I'm saying is I agree with that. But then, it creates this gray area that's then going to result in a lot of legal disagreements.

John Kansky – Indiana Health Information Exchange - Member

And as soon as you begin applying the definition of EHI as per the purpose of the regulation, I think you've reached into the fringes of the intent and you've dramatically made the compliance and enforcement more difficult.

Andrew Truscott – Accenture – Co-Chair

My personal position is I agree. As your chair, I'm trying to come to some description. So, taking that onboard, how do we think we are going to support ambitions around improved management of the healthcare ecosystem through things like price transparency with this definition?

John Kansky – Indiana Health Information Exchange - Member

Well, if the definition already includes related to the past, present, or future health condition or past or future payment then, are we not already being helpful?

Andrew Truscott – Accenture – Co-Chair

Only where that data is identifiable to the explicit individual not where that information – well, you're saying that we'll be transparent about the price for you and you only. We're not saying we'll be transparent about the price about what the cost of, I don't know, the average surgery X, the average surgery Y. No, we're not going to be transparent about that. We're only going to be transparent about you.

John Kansky – Indiana Health Information Exchange - Member

Okay. Well, my personal opinion –

Cynthia Fisher – WaterRev LLC - Member

Or other prices. There may be not just averages, there may be other prices or competitive prices that could be –

[Crosstalk]

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

I understand where you're going now because you're basically saying if we leave it the way it is then, they'll only be able to see what specifically applies to them. And how do we know it's going to apply to them in the future because it hasn't happened yet. So, what happens with prospective type things or models that they may fit into.

Andrew Truscott – Accenture – Co-Chair

And it would fall very clearly into usability exception to say it's unfeasible for me to share with you what your future healthcare costs might be. It displays everything about your future healthcare disposition. And we don't want that, do we? That's the point.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

I guess if it was easy, they wouldn't be asking for us to provide input. So, this is why we're here. Not to state the obvious but in that –

Andrew Truscott – Accenture – Co-Chair

And you think you got appointed to HITAC for an easy life. No.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Yeah. I do then think we need to address the deidentified data or data that is not personally identified as well because I agree with you and that's the point I think Cynthia has been making all morning is that in order to get the pricing information in here, they're not necessarily specific to a person in its raw form until you apply what the potential impacts to that person would be. So, I do think we need to identify that maybe what it means though is that electronic health information itself shouldn't be expanded. But maybe it means that there should be electronic health information that's specific to a patient so that provides more clarity. And then, there's electronic health something else that applies to all of that gray stuff.

Andrew Truscott – Accenture – Co-Chair

Okay. You're right. Let's just park this and all of us have a think whilst we listen to our public comments. Can we open up the lines to public comment, please?

Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer

Operator, can you open the line?

Operator

If you would like to make a public comment, please press star 1 on your telephone keypad. A confirmation tone will indicate your line is in the cue. You may press star 2 if you would like to remove your comment from the cue. For participants using speaker equipment, it may be necessary to pick up your handset before pressing the star keys.

Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer

Thank you. Are there any comments in the cue at this time?

Operator

Not at this time.

Andrew Truscott – Accenture – Co-Chair

Okay, thanks. So, picking up on your points there, I'm wondering whether actually in this definition, we should also be looking at the purpose theme the data is going to be put to as kind of that level that says whether it falls inside or outside. And it gets difficult when you have a definition that data might be handled differently depending upon the purpose. It's been done but it is tricky.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Right. So, I'd liken it to something that we do within Anthem where we say there's data that we use that runs our systems. And then, there's data that we use that helps inform how we behave in terms of how we implement those systems. So, maybe we need health information technology to be specific to the individual's information and then, we have health information whatever, and I don't know the proper word for it yet, that represents all of the other stuff, which potentially could be more metadata, if you will, or something but gets to the payment information and the pricing information because to that, you need to know the person, the group, the plan that they've signed up for, what provider network they might have been assigned to and all of that kind of stuff, which is yes, health information but not contained in a health record, if you will. It's separated from that.

So, maybe we need something that is what we're talking about that governs all of that but it's not necessarily going to fall under the definition of electronic health information.

Andrew Truscott – Accenture – Co-Chair

I'm with you. And I've already had the feedback. I just got it on Tuesday when someone had read the EHI. They were like this can refer to facts as well. In fact, it can refer to electronic transmittal. It can be many, many different things beyond what we actually are hoping it does. So, keep our thinking hats on. Public comments?

John Kansky – Indiana Health Information Exchange - Member

Andy?

Andrew Truscott – Accenture – Co-Chair

Operator?

Operator

No comments in the cue at this time.

Andrew Truscott – Accenture – Co-Chair

Okay. Thank you. Sorry, John, you were interjecting.

John Kansky – Indiana Health Information Exchange - Member

Sorry. So, trying to get back to I think the question you were asking. I had a little think as you suggested. And here's my attempt at a concise point I'd like to make. So, lack of price transparency is a problem and information blocking is a problem. However, I don't think the information blocking reg is the correct regulation to wholly solve price transparency. But requiring the sharing of identified pricing information will go a long way. Hence, the definition of including pricing information but requiring it to be identified, I think, is reasonable and constructive.

Andrew Truscott – Accenture – Co-Chair

Okay. Thanks, John.

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

It sounds good.

Cynthia Fisher – WaterRev LLC - Member

I think that –

Andrew Truscott – Accenture – Co-Chair

Guys, we're coming to the last five minutes. I think all of us have to do some homework. We have to come up with proposed verbiage that we can discuss and throw rocks at on our next call around this because it is fundamental. And we can't just discuss the points and do our thinking on the phone. We have to do our thinking in our own time as well. Is that okay?

Sheryl Turney – Anthem Blue Cross Blue Shield - Member

Yes. We need to do homework.

John Kansky – Indiana Health Information Exchange - Member

The specific topic, again, Andy, was what? I'm sorry, I missed it.

Andrew Truscott – Accenture – Co-Chair

I as a chair need everyone to go and think about this sometime before the next call. **[Audio distortion]** myself and Mark and Mike before the next call some proposed verbiage, which you think counts as comfortable with what we need to do inside this definition. And I'm asking that because we can't carry on thinking about this whilst we are discussing it as well. We need to have a position and discuss our positions as opposed to doing that joined up thinking in the two hours we have because, otherwise, we're not going to get to the end of

all of this. And I think I heard someone said yes, we can do that.

John Kansky – Indiana Health Information Exchange - Member
Yes.

Cynthia Fisher – WaterRev LLC - Member
We can do that, Andy. We can do our homework and happy to oblige. Thank you, Andy.

Andrew Truscott – Accenture – Co-Chair
I'm sorry. I don't like giving people homework, trust me. Okay. any other closing comments? The ONC guys have been remarkably quiet for the last 30 minutes, remarkably so.

Mark Knee – Office of the National Coordinator – Staff Lead
I don't have anything else. I think you made some really good suggestions that it will be helpful to have some mark ups or clear ideas for the next conversation.

Michael Lipinski – Office of the National Coordinator - Staff Lead
I had said I would promise to be quiet. And I was called out on that. So, I will be quiet. Tomorrow, I guess, I get my few minutes to talk about the rules with you guys. I hope that will be helpful.

Andrew Truscott – Accenture – Co-Chair
Hang on a second. Tomorrow's call, what I've asked the team is that ONC presents their background thinking behind just the regulations that we're considering. Not everything, just this is what we were thinking about as we came up with –

Cynthia Fisher – WaterRev LLC - Member
You can open up your medical bills there, Martin.

Andrew Truscott – Accenture – Co-Chair
I beg your pardon. It's just what they were seeking to achieve.

Cynthia Fisher – WaterRev LLC - Member
Are you going to show them the video from Washington?

Andrew Truscott – Accenture – Co-Chair
Is somebody on mute or not on mute?

Sheryl Turney – Anthem Blue Cross Blue Shield - Member
I think somebody is not on mute.

Andrew Truscott – Accenture – Co-Chair
Yeah. Interesting. It's always interesting to hear the inner workings, isn't it, of what's really

going on? Okay. Guys, thank you ever so much. It's top of the hour. I look forward to your emails in the next 24 hours.

[Event Concluded]