



Meeting Notes

Health Information Technology Advisory Committee

Information Blocking Task Force

Workgroup 2: Exceptions

April 03 2019, 4:00 p.m. – 6:00 p.m. ET

Virtual

The April 03, 2019, meeting of the Information Blocking Task Force Workgroup 2: Exceptions of the Health IT Advisory Committee (HITAC) was called to order at 4:00 p.m. ET by Lauren Richie, Designated Federal Officer, Office of the National Coordinator for Health IT (ONC).

Lauren Richie conducted roll call.

Roll Call

MEMBERS IN ATTENDANCE

Michael Adcock, Co-Chair, Individual

Andrew Truscott, Co-Chair, Accenture

Valerie Grey, Member, New York eHealth Collaborative

Anil Jain, Member, IBM Watson Health

Steven Lane, Member, Sutter Health

Arien Malec, Member, Change Healthcare

ONC STAFF

Cassandra Hadley, ONC Staff Lead

Mark Knee, Staff Lead

Morris Landau, ONC SME

Lauren Richie, Branch Chief, Coordination, Designated Federal Officer

Lauren Wu, ONC SME

Lauren Richie turned the meeting over to Andy Truscott, co-chair.

Revisit outstanding issues

Andy Truscott asked the group to come together to finalize recommendations to present to the HITAC. He noted that Arien Malec has done a lot of work around the fees. He suggested walking through the remaining items and the assignments that Mark Knee sent out to the group. Steven Lane and Valerie Grey noted that they are working on reviewing everything, but do not have a draft to review yet.

Revise draft recommendations

§ 171.202 Exception — Promoting the privacy of electronic health information



The group reviewed the comments shared by members in this section. Steven Lane will be drafting the recommendations on this section. The time was used to clarify questions Steven had to help him draft the recommendations.

There was a discussion around the following:

- (c)(3) Had previously been meaningfully disclosed to the persons and entities that use the actor's product or service
 - **Arien Malec** noted a need to clarify adequate prior notice, using something other than meaningful.
 - He also suggested that ONC may want to go further, given the hook of certification and information blocking.
 - There should be a higher bar that they will have to pass through.

§ 171.207 Exception — Maintaining and improving health IT performance.

Valerie Grey will be drafting this section and reviewed clarifying questions she had related to comments members had provided on this section.

(a) *Maintenance and improvements to health IT.* An actor may make health IT under its control temporarily unavailable in order to perform maintenance or improvements to the health IT, provided that the actor's practice is—

- (1) For a period of time no longer than necessary to achieve the maintenance or improvements for which the health IT was made unavailable;
 - (2) Implemented in a consistent and non-discriminatory manner; and
 - (3) If the unavailability is initiated by a health IT developer of certified health IT, HIE, or HIN, agreed to by the individual or entity to whom the health IT developer of certified health IT, HIE, or HIN supplied the health IT.
- **Arien Malec** noted that it should be clear that it includes negotiated service level agreements (SLAs).
 - **Valerie Grey** shared that she thought this was clear in the preamble.
 - **Arien Malec** noted that preamble is not a substitute for the actual regulation text. He also questioned at one point do we pass from contract law to information blocking.
 - **Arien Malec** volunteered to propose language.

§ 171.205 Exception — Responding to requests that are infeasible.

Valerie Grey questioned the use of “timely” and asked the group if they were comfortable with the use of the word.

- **Andy Truscott** shared that he felt that “timely” is too subjective and a proposal should be made to clarify. He suggested the use of no longer than, instead of timely.

Valerie Grey asked for clarification around the comments that were shared around start-ups.

- **Andy Truscott** suggested asking ONC to clarify how they will enforce this.
- **Anil Jain** noted that if ONC is going to start a demonstration product, interoperability needs to be a key criterion for funding.
- **Arien Malec** thought the rule should be more amenable to innovators.



Pricing

Arien Malec shared that in regards to pricing he tried to aggregate the comments from the group into recommendations. He asked the other members to review and provide feedback.

Next Steps

Andy Truscott shared that they are working to aggregate everything into one document that can be reviewed with the HITAC on behalf of the full task force. He also asked Arien to work on recommendations for the request for information on disincentives for health care providers.

Lauren Richie opened the lines for public comment.

Public Comment

There was no public comment.

Adjourn

The next meeting will be on Friday, April 5 at 2:30 p.m. ET. **Lauren Richie** adjourned the meeting at 5:12 p.m. ET.