Meeting Notes
Health Information Technology Advisory Committee
Information Blocking Task Force
Workgroup 2: Exceptions
March 6, 2019, 4:00 p.m. – 6:00 p.m. ET
Virtual

The March 6, 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).

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, HITAC Backup/Support
Mark Knee, Staff Lead
Morris Landau, ONC Backup/Support
Lauren Richie, Branch Chief, Coordination, Designated Federal Officer
Lauren Wu, ONC SME

Call to Order

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

Andy Truscott co-chair welcomed the workgroup and turned it over to Mark Knee to walk through how the group will be reviewing the materials for today's discussion.

Mark Knee shared a Google document that was created for the group to provide feedback and comment. The document includes regulation text and preamble pages (he noted it is important to review the preamble in addition to the regulation text).

He noted that the highest priority items will be reviewed on Friday, March 8, 2019, when the full IACCTF meets to discuss the work from each of the workgroups.

Andy Truscott clarified that it would be best for members to provide their feedback in the shared document.

Exception for Preventing Harm

We propose to establish an exception to the information blocking provision for practices that are reasonable and necessary to prevent harm to a patient or another person, provided certain conditions are met.

§ 171.201 Exception — Preventing harm.

To qualify for this exception, each practice by an actor must meet the following conditions at all relevant times.

(a) The actor must have a reasonable belief that the practice will directly and substantially reduce the likelihood of harm to a patient or another person arising from—

  (1) Corrupt or inaccurate data being recorded or incorporated in a patient's electronic health record;

  (2) Misidentification of a patient or patient's electronic health information; or

  (3) Disclosure of a patient's electronic health information in circumstances where a licensed health care professional has determined, in the exercise of professional judgment, that the disclosure is reasonably likely to endanger the life or physical safety of the patient or another person, provided that, if required by applicable federal or state law, the patient has been afforded any right of review of that determination.

(b) If the practice implements an organizational policy, the policy must be—

  (1) In writing;

  (2) Based on relevant clinical, technical, and other appropriate expertise;

  (3) Implemented in a consistent and non-discriminatory manner; and

  (4) No broader than necessary to mitigate the risk of harm.

DISCUSSION
(a)(1)(2)(3)

- **Arien Malec** expressed concern regarding the standard for inaccurate records.
  - The patient should be able to correct an inaccurate record.
  - There need to be clear standards and clear obligations for counterparties to meet so that those exceptions are rare in practice.
  - There is a good standard on corrupt or inaccurate. This should be limited to pure corruption when the data holder is not reflective of what the party would normally access.
  - Misidentification of patients should be limited to where we know we are giving the wrong patient data in response to a request. There need to be standards for the maintenance of patient matching standards.
- **Steven Lane** notes that there is a need to make sure that all of the exceptions are as clearly specified as possible.
  - **Andy Truscott** asked: if any data is inaccurate, should the full record be blocked?
  - **Arien Malec** noted that in many of the regulation texts, there are caveats that the blocking must be minimal.
  - **Anil Jain** noted that this could be problematic clinically.

- **Mark Knee** noted that the preamble is part of the regulation text and helps provide additional clarity. If there is ambiguity about the regulation text, the preamble can help provide additional insight.

Andy Truscott noted that A is an "or" list and B is an "and" list.

Arien Malec noted that the regulation text needs to be updated because it is clearer in the preamble.

(b) If the practice implements an organizational policy, the policy must be
- **Andy Truscott** felt that this should be reworded

(b)(2)
- **Steven Lane** suggested adding operational to the list.
- **Andy Truscott** noted that "relevant expertise" should be used.

(c)
- **Andy Truscott** felt that this should be reworded
- **Andy Truscott** noted that the actor must make and record a finding.

Exception for Promoting the Privacy of EHI

DISCUSSION
- **Anil Jain** felt there was a lot of ownness of the organization. The actor must make and record a finding.
- The workgroup suggested adding language that organizational policies comply with federal, state, and local laws.

(b)(1)(i)
- **Andy Truscott** questioned if it was lawful.

(b)(2)
- **Andy Truscott** questioned if the consent would be recorded.

c) Health IT developer of certified health IT not covered by HIPAA
- **Anil Jain** noted that there is a need to help readers understand what meaningfully disclosed means.
- **Steven Lane** questioned whether this was necessary because it seems to be covered in HIPAA.
  - ○ **Mark Knee** noted that ONC worked closely with the Office for Civil Rights (OCR). ONC wanted to be complementary to the Health Insurance Portability and Accountability Act (HIPAA) and felt it was necessary to lay this out.

Lauren Richie opened the lines for public comment.

Public Comment
There was no public comment.

Next Steps and Adjourn

The next meeting is on Friday, March 8 at 2:30 p.m. ET. The meeting was adjourned at 6:00 p.m. ET