



## Meeting Notes

### Health Information Technology Advisory Committee Information Blocking Task Force Workgroup 1: Relevant Statutory Terms and Provisions March 14, 2019, 1:00 p.m. – 3:00 p.m. ET Virtual

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The March 14, 2019, meeting of the Information Blocking Task Force Workgroup 1: Relevant Statutory Terms and Provisions of the Health IT Advisory Committee (HITAC) was called to order at 1:00 p.m. ET by Cassandra Hadley, Designated Federal Officer, Office of the National Coordinator for Health IT (ONC).

#### Roll Call

##### MEMBERS IN ATTENDANCE

**Michael Adcock**, Co-Chair, Individual  
Cynthia Fisher, Member, WaterRev, LL  
John Kansky, Member, Indiana Health Information Exchange

##### MEMBERS NOT IN ATTENDANCE

**Andrew Truscott**, Co-Chair, Accenture  
Denni McColm, Member, Citizens Memorial Healthcare  
Sheryl Turney, Member, Anthem

##### ONC STAFF

Cassandra Hadley, ONC  
Penelope Hughes, ONC Backup/Support  
Mark Knee, ONC Staff Lead  
Lauren Wu, SME

#### Call to Order

**Cassandra Hadley** called the meeting to order, conducted roll call, and turned the meeting over to Michael Adcock, co-chair.

**Michael Adcock** welcomed the workgroup and dove into the discussion of practices that may implicate the information blocking provision.

#### Practices that may implicate the information blocking provision

- **John Kansky** noted there is subjectivity in the examples provided of situations that could implicate the information blocking provision.



- **Mark Knee** noted that the examples are not an exhaustive list and are examples of when the information blocking provision could be implicated.
- **John Kansky** said that intellectual property should be protected.
  - **Mark Knee** noted there is an exception for licensing on RAND terms. He encouraged John to review this exception to be sure his concerns regarding intellectual property are addressed.
- **John Kansky** expressed concern about the preamble discussion on page 367 (Word version) and wondered if these would be examples of information blocking.
  - The workgroup felt these were examples of information blocking.

## Parties affected by the information blocking provision and exceptions

- **Cynthia Fisher** commented that payers need to be included as actors.
  - **Mark Knee** suggested considering how real-life individuals and entities might fit or not fit within the four categories of actors identified in the 21<sup>st</sup> Century Cures Act (Cures Act) and defined by ONC in the proposed regulation.
- **Recommendation:** The workgroup recommends that the definition of “Actors” be augmented to include a functional component followed by illustration of common-names for those actors.
  - **Proposed wording:** “Actors” regulated by the information blocking provision include all those organizations and individuals who create, store, curate, or otherwise process Electronic Health Information about a patient as an individual, or in aggregate. Such organizations and individuals may include health care providers, health care insurers, health IT developers, health information exchanges, and health information networks.
  - **Mark Knee** noted that the regulated individuals and entities under the information blocking provision are identified in Cures (health care providers, developers, networks, exchanges) and “actors” is a term used by ONC to refer to those four categories of individuals and entities.
  - The workgroup will need to follow-up on this once Andy Truscott is available.

## Draft Recommendation Review and Discussion

### DEFINITION OF ELECTRONIC HEALTH INFORMATION

- **Current Text:** (2) Any other information that identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual and is transmitted by or maintained in electronic media, as defined in 45 CFR 160.103, that relates to the past, present, or future health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
- **Proposed recommendation:** Add text in the preamble that clarifies that “information” is inclusive of human or machine-readable forms.
  - **Cynthia Fisher** suggested updating the definition of EHI to:
    - (1) Electronic protected health information; and
    - (2) Any other information that identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual and is transmitted by or maintained in electronic media, as defined in 45 CFR 160.103 that relates to the past, present, or future health or condition of an individual; the provision of health care to an individual; and



- **Proposed addition (3)** Any other information that relates to the past, present, or future payment for the provision of health care to an individual
- **Cynthia Fisher** agreed to add the proposed recommendation into the Google document.

## DEFINITION OF ELECTRONIC HEALTH INFORMATION (EHI)

- **John Kansky** noted that the workgroup seems silent on the implication of adding price, concerned about the unintended consequences and complexity and costs of complying.
- **Mark Knee** noted that there is a request for comment and request for information and suggested that members add their input into the Google document.

## DEFINITION OF HEALTH INFORMATION EXCHANGE AND NETWORK

- **John Kansky** felt the definitions are too broad. He recommended providing examples of entities that would and would not be considered HIN or HIEs.
- **Michael Adcock** reviewed the changes agreed to during the last call: *Health Information Exchange or HIE* means an individual or entity that enables, facilitates, or performs the access, exchange, processing, handling or other use of electronic health information.
- **Michael Adcock** asked the members to work on identifying the types of organizations that could be included in the preamble.

**Cassandra Hadley** opened the lines for public comment.

## Public Comment

There was no public comment.

## Next Steps and Adjourn

**Michael Adcock** thanked the workgroup for their hard work and for being respectful even when there are differing viewpoints. He asked the workgroup to go into the shared Google document to help with the discussion during the next meeting.

**Cassandra Hadley** adjourned the meeting at 2:50 p.m. ET.