# Information Blocking (IB) Task Force

Transcript
May 03, 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 |
| Sheryl Turney | Anthem Blue Cross Blue Shield | Member |
| Denise Webb | Individual | Member |
| Lauren Richie | Office of the National Coordinator | Designated Federal Officer |
| Cassandra Hadley | Office of the National Coordinator | HITAC Back-up/Support |
| Mike Lipinski | Office of the National Coordinator | Staff Lead |
| Mark Knee | Office of the National Coordinator | Staff Lead |
| Penelope Hughes | Office of the National Coordinator | Back-up/Support |
| Morris Landau | Office of the National Coordinator | Back-up/Support |
| Lauren Wu | Office of the National Coordinator | SME |

**Operator**
All lines are now bridged.

**Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer**
Good morning, everyone. Welcome to the Information Blocking Task Force. I'll take roll call. I know we are all excited to dive in. Andrew Truscott?

**Andrew Truscott – Accenture – Co-Chair**
Present.

**Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer**
Michael Adcock? Not yet. Steven Lane?

**Steven Lane – Sutter Health – Member**
Just arrived, sorry.

**Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer**
Thank you. Sheryl Turney?

**Sheryl Turney – Anthem Blue Cross Blue Shield – Member**
Sheryl's here.

**Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer**
Denise Webb? I know that Sasha is on. Aaron Miri? Arien is on. Valerie Grey?

**Valerie Grey – New York eHealth Collaborative – Member**
I'm here.

**Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer**
Great. I know that Anil is on. Cynthia Fisher?

**Cynthia A. Fisher – WaterRev LLC - Member**
Yes, I am here.

**Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer**
Thank you. 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. And Denni McColm? Okay. Andy, I will turn it over to you to get us started.

**Andrew Truscott – Accenture – Co-Chair**
Hey, good morning, everybody. Thank you for taking some time out of your Friday. Happy Friday to one and all. The main focus of today's meeting is for us to start considering our comments around TEFCA or TEF, however we want to refer to it, the framework which was released recently the last couple weeks, we had initially gotten a holding statement back from us in our feedback to make recommendations to ONC. Now that it's out, it's our responsibility to consider it and pass back any comments we wish to.

So, I know that we've all read it. We've all thought about where we should comment, where we want to not comment. I'm going to open the floor to see if anybody wants to make any initial comments around it. We'll take it from there. The floor is open.

**Steven Lane – Sutter Health – Member**
Can I ask an orienting question? This is Steven Lane. This is the Information Blocking Task Force. I am under the impression that ONC may be standing up a second TEFCA Task Force. Can I just understand from the ONC perspective what the charge is to this Task Force vis-à-vis TEFCA and whether or not other Task Forces will be asked the same question or there will be another Task Force to dive deeper into this. I'm just trying to understand where we're at here.

**Mark Knee – Office of the National Coordinator for Health Information Technology - Staff Lead**
Yes. Hey, Steven. This is Mark. It's a good question. You're right. There is a separate TEFCA or TEF Task Force. I believe it's starting up possibly next week. Arien might be able to give some more information on that. I think he's the chair. As far as what the charge is for you all here, there are two requests for information that relate to information blocking that have to do with TEFCA. One is regarding the exceptions, whether we should consider an additional exception for practices that relate to being compliant with the Trusted Exchange Framework and Common Agreement.

Then also in the assurances, whether participating in TEFCA should be a requirement for some developers to provide assurances that they are not information blocking. Those are the two requests for information that are on pages 165 and 497 of the Word document, the Word version of the proposed rule. It's kind of the focus, but more generally, like Andy said, we're interested to have other thoughts as well.

**Arien Malec – Change Healthcare – Member**
John Kansky are the Co-Chairs of the TEFCA Task Force. I agree that the information blocking

– we're trying really hard in the TEFCA Task Force to stay away from information blocking things like definition of HIE/HIN, etc. I think as was pointed out, the areas of overlap are the dependency on the TEFCA and the proposed exceptions.

**Mark Knee – Office of the National Coordinator for Health Information Technology - Staff Lead**

Does anyone else have any questions for ONC about this? Should we just open up to comment like Andy said?

**Andrew Truscott – Accenture – Co-Chair**

Okay. Let's open up. Does anybody want to take the first salvo around thinking through this?

**Arien Malec – Change Healthcare – Member**

I'll bite.

**Andrew Truscott – Accenture – Co-Chair**

I was hoping so.

**Arien Malec – Change Healthcare – Member**

I think as a Task Force, we should maintain our position that having a – the position that I think we've taken so far is that having an affirmative set of obligations for actors to conform to that could be deemed – that provide the moral effect of a safe harbor would be very useful because it would drive actors in the direction of setting up trusted exchange, setting up appropriate standards and complying with the TEFCA capabilities.

Now, I still think we need to debate in the TEFCA Task Force and get a final TEFCA rule. I'm not sure the publication of the TEFCA 2 solves all of our existential issues about knowing whether the TEFCA is or isn't the appropriate mechanism for a safe harbor. So, I just think it would be better for us to stand where we are, which is to say yes, we believe that having an affirmative set of obligations that have the effect of driving substantial interoperability would be useful.

**Andrew Truscott – Accenture – Co-Chair**

Would it be fair to say, Arien, that if we make a statement from this Task Force that we believe TEFCA should be that safe harbor or if we do not make that statement that we think TEFCA should be that safe harbor, which is in itself a statement to not say. That would be a useful thing for us to do.

**Arien Malec – Change Healthcare – Member**

I'm suggesting a slightly different stance, which is to say that having a safe harbor is a good thing and stay somewhat agnostic as to whether TEFCA as proposed is or isn't the safe harbor. That may be just a little too hair-splitting for folks.

**Andrew Truscott – Accenture – Co-Chair**

No, I think that's fine. Should we be trying to say that TEFCA should be the safe harbor and we believe there are, from our initial reading of TEFCA, further refinement required to make it that safe harbor or do we want to stand back on that?

**Arien Malec – Change Healthcare – Member**

I'd stand back from that just because I think that's the mandate of the TEFCA Task Force.

**Sasha TerMaat – Epic – Member**

It might be useful. This is Sasha. I favor Arien's proposal overall. If we wanted to identify characteristics of a safe harbor-type approach. That might be consistent with this Task Force's purview if we said we favor a type of approach that offers a proactive way to demonstrate that a particular actor has not been information blocking and such an approach would have the following characteristics. I think we could certainly elaborate if there's consensus among the group on what some of those pieces would look like.

I would also, I think, disincline to specifically the trusted exchange framework at this point, particularly just because it seems problematic to identify something that's still so much in flux. If the Trusted Exchange Framework in its final incarnation meets the characteristics of a safe harbor that we identify as being desirable in this framework, that would be one alternative, but there might be other things that would meet the same characteristics that exist or emerge in the future and I don't know that our intention is to eliminate that.

**Mike Lipinski – Office of the National Coordinator for Health Information Technology - Staff Lead**

If I could jump in – this is Mike Lipinski with ONC. Can you all hear me?

**Andrew Truscott – Accenture – Co-Chair**

We can, Michael.

**Mike Lipinski – Office of the National Coordinator for Health Information Technology - Staff Lead**

So, obviously, it's an RFI to inform future rule making. I think you guys are raising good points. You don't have anything solid to know exactly what the final provisions of the agreement would be in the flow downs. However, here are some things you think about. For example, right now, the proposed exceptions are on like reasonable costs incurred, security, as long as it's tailored to a particular identified security risk.

So, what we didn't say in TEFCA, what the fees were going to be that QHINs would charge and so forth. So, maybe those fees, whatever they end up being, aren't necessarily consistent with the exception we've already provided with, depending on how it gets finalized, the reasonable costs incurred, or the security requirements may be such that maybe they wouldn't meet the security exception.

So, those are some of the things that I'm thinking about now as to whether or not there should be a TEFCA exception. Then there's also, as you guys are talking about, policy reasons

why such an exception would exist if you wanted to promote participation in it and things of that nature.

So, those are just some of the things. I understand it's still very abstract, even with a second draft, but hopefully those would give you guys who have experience in exchange and so forth some ideas of what we should be thinking about when we come forth with possibly a proposal in the future related to an exception.

**Andrew Truscott – Accenture – Co-Chair**
Thanks, Michael.

**Mark Knee – Office of the National Coordinator for Health Information Technology - Staff Lead**
Can I jump in?

**Andrew Truscott – Accenture – Co-Chair**
I'm not viewing on the screen yet. So, I can't see if people have got raised hands. I will be in five minutes' time.

**John Kansky – Indiana Health Information Exchange – Member**
I didn't bother. Sorry if I'm cutting in front of somebody. The information blocking regulation is to prevent information blocking through regulation. TEFCA regulation is to establish a national interoperability ecosystem. I have a comment and a question. The comment is that I'm uncomfortable with and willing to say I'm not in favor of establishing TEFCA as a safe harbor and information blocking for the sole purpose of incentivizing people to participate in this future ecosystem.

I imagine many people would be uncomfortable with that because that's not the purpose of the information blocking regulation. That said, the conceptual question is is the idea behind creating a – if you participate in TEF, then you're not info blocking exception – is the concept behind that that any organization participating in TEFCA obviously isn't information blocking or is it not quite that direct because if you can be in TEF and still info block, the why would we make that connection?

**Steven Lane – Sutter Health – Member**
Yeah, John, just to tag on to that – this is Steven Lane – I fully agree with what you just said. They do seem a little disjointed. I absolutely believe that people could participate in TEF and still information block in other parts of their business. So, I do generally like the idea of incentivizing people to participate in the TEFCA, if and when it exists, but this does seem like an odd vehicle to use it. The idea of a safe harbor, we spent so much time looking at the individual exceptions, I don't quite get the value of a get out of jail free card over and above or separate from the exceptions that we've reviewed.

**Anil K. Jain – IBM Watson Health – Member**
Do you want to jump in, Mike?

**Mike Lipinski – Office of the National Coordinator for Health Information Technology - Staff Lead**

Sure. So, it's not really a proposal. It's just an RFI. What we were considering in the future was a narrow exception. It was for complying with the requirements of the common agreement. So, it wasn't as broad as I think some might think. I think that's fair to think about that. Maybe we had it wrong. It doesn't sound like it based on what I'm hearing from you guys that it should be a broader exception.

But that wasn't what we were thinking about when we put in here request for comment. We were saying if it was specific compliance with the common agreement terms. That term would not be – they wouldn't allege, "Oh, you're charging such and such fees," and they're like, "That's the fees I'm about to charge with the common agreement." So, therefore I can't be an info blocker is what we're talking about. It's not any actions of somebody participating in the Trusted Exchange Framework.

**Arien Malec – Change Healthcare – Member**

I think it might be worthwhile – sorry, go ahead.

**Cynthia A. Fisher – WaterRev LLC - Member**

I'm sorry. I'm traveling. I can't raise my hand on the screen. This is Cynthia Fisher. I support what Steve and John were saying about deep, deep concern about a safe harbor because there are lots of other ways that one can information block and having a safe harbor just for participation in TEFCA is very alarming and disconcerting from a patient perspective and physician caregiver perspective as well.

**Andrew Truscott – Accenture – Co-Chair**

So, we obviously have two very distinct views coming from our Task Force. I believe that we would be missing our charge if we didn't comment and at least articulate those two distinct opinions and if we can come to a majority decision one way or another as our recommendation, that would be good too. I definitely think we have two very distinct views. Has any other member got any other comment?

**Arien Malec – Change Healthcare – Member**

This is Arien. Oh, go ahead, Anil. Sorry. I do actually, just as a point of process, have my hand raised.

**Anil K. Jain – IBM Watson Health – Member**

I do too. I think we have to make sure we go through this backwards. Instead of creating an environment where a common agreement could inadvertently allow for information blocking and someone could use that as an exception, why not make comments from this Task Force saying that the common agreement needs to reinforce the principles of preventing information blocking in the common agreement itself.

So, if we're going to comment on this from the perspective of whether there can be an

exception, then I think we should do it in the right direction. Otherwise, for all the reasons that were articulated, we're going to have a situation where people have a common agreement, set of requirements and say, "I'm part of the TEFCA. I can't be information blocking." Instead, we should say the common agreements should align with what we're proposing as promoting sharing and not information blocking. Let's make sure to go through the right direction.

**Andrew Truscott – Accenture – Co-Chair**

Anil, in saying that – I can see everyone's hands raised – hang on a second. In saying that, are you suggesting that we should go further and say that participating in TEFCA is not a safe harbor and does not automatically mean you are not information blocking, but the TEFCA should align with the principles of information blocking that we've got.

**Anil K. Jain – IBM Watson Health – Member**

Well, yeah. In other parts of our discourse, we've talked about how the agreements that are signed have to promote best practices and prevent some of these information blocking practices. So, I can't imagine why we would not say the same thing about this. We're not going to give a safe harbor. Instead, we're going to say the common agreements need to be aligned.

**Andrew Truscott – Accenture – Co-Chair**

Okay. Thanks. Arien, you're next.

**Arien Malec – Change Healthcare – Member**

I think it might be useful or helpful to look at what I wrote as the recommendation, which clearly, we haven't reviewed yet. But I think try to get some of these nuances in. So, No. 1 is we don't want a blanket exception for participating in the TEFCA understanding that there are other practices that could be problematic over and above participating in the TEFCA. No. 2 is a TEFCA that addresses the requirements of information blocking would be highly desirable and an affirmative means for addressing those information blocking requirements would be highly desirable.

So, I think the draft recommendations address some of the concerns that have been raised. Now, it's not clear to me that the TEFCA 2 as it stands addresses all of the information blocking needs and requirements. So, ideally, there would be a single reasonable way, not a single mandated way, but a single reasonable way to offer data via API to patients, providers, and other actors for permissible purposes in the context of a trust framework that addressed security and privacy considerations.

So, I think it might be useful to look at what the draft looks like right now and to see whether we agree or disagree with the draft as it's currently framed.

**Andrew Truscott – Accenture – Co-Chair**

So, it's coming up on screen right now.

**Arien Malec – Change Healthcare – Member**

That's what I was going to say. We're pulling it up.

**Andrew Truscott – Accenture – Co-Chair**

While we're bringing that up, Steven, do you want to comment?

**Steven Lane – Sutter Health – Member**

Yeah. I want to point out that we've been talking about this in two different ways. The folks from the ONC keep saying compliance with the terms of the common agreement or compliance with the principles of the trusted exchange framework as opposed to being a signed participant in the TEF and/or the CA. I think we have to be very clear if this is about trying to get people to do the right thing, then we would say if you're complying with the terms, that's good enough. If we're talking about using this as a carrot to get people to be TEFCA participants, then we have to say that. I think, again, this is a philosophical question.

Again, a part of me says yeah, if we setup TEFCA, we want people to participate and we want to put in carrots that say, "If you sign here on the dotted line, you're going to get something back in return." But a part of me really finds that inappropriate and wants to stand on principle and say that it is just compliance with the terms that would be important. I think we have to differentiate how we're going to slice this.

**Andrew Truscott – Accenture – Co-Chair**

Thanks, Steven. You can lower your hand now. Okay. We do have this dichotomy of view. Has anybody else got any other thoughts around this?

**John Kansky – Indiana Health Information Exchange – Member**

I think the first question is do we believe in creating a safe harbor? I don't think it's a pure dichotomy. We have to answer that question first. Then we have to say if we believe in creating a safe harbor, what are the specifics of that.

**Andrew Truscott – Accenture – Co-Chair**

That's a good point. Let's start with that. I'm happy to do that. Should we be seeking to create a safe harbor that prevents or provides an assurance that you will not be implicating the information blocking rules?

**Arien Malec – Change Healthcare – Member**

Again, I think it would be useful to read the draft that I proposed because I deliberately didn't use the term safe harbor. I used the term affirmative set of obligations that would be deemed in the presence of other negative behavior to be in compliance with the information blocking requirements.

**Andrew Truscott – Accenture – Co-Chair**

Let's scroll down a bit.

**Arien Malec – Change Healthcare – Member**

I'm happy to explain what I view as the difference between those two. What I'm asserting is that it would be –

**Andrew Truscott – Accenture – Co-Chair**

Arien, where did you document it? We seem to be struggling to find it.

**Arien Malec – Change Healthcare – Member**

It was in the text section. Maybe it got whacked or… Can you go up a little bit? It wasn't there?

**Steven Lane – Sutter Health – Member**

Do you remember any keywords that we can search for? Maybe it's in a different section.

**Andrew Truscott – Accenture – Co-Chair**

You might have put it into the Workgroup 2 document post us moving to the consolidated document.

**Arien Malec – Change Healthcare – Member**

That's also quite possible.

**Andrew Truscott – Accenture – Co-Chair**

Katharine, could you bring up the exclusive Workgroup 2 document, please?

**Arien Malec – Change Healthcare – Member**

That's, in fact, quite likely.

**Andrew Truscott – Accenture – Co-Chair**

Or you could just go and look on Twitter.

**Arien Malec – Change Healthcare – Member**

No, unfortunately.

**Andrew Truscott – Accenture – Co-Chair**

That means we've got something to debate.

**Arien Malec – Change Healthcare – Member**

So, maybe I can just frame up what my position is.

**Andrew Truscott – Accenture – Co-Chair**

Frame it up while Katharine is bringing it up.

**Arien Malec – Change Healthcare – Member**

Yeah, agreement or disagreement. So, my position is that there is a lot for actors to comply with with respect to information blocking. If you read Cures and if you look at the NPRM, they need to respond to any reasonable request for a permissible purpose that isn't infeasible with respect to the seven exceptions. There's a lot of uncertainty about how to address all of the requirements for information blocking.

There is at least a reasonable position that if I stand up an API, make it available to patients, providers, and other actors for the purposes of access to data and I comply with reasonable public-private-endorsed terms, that that action in the absence of other specific blocking behavior should be reasonably deemed to be compliant with information blocking. So, in this hypothetical, if I stand up an API gateway that offers an API to the patient that includes – there we go. Look.

**Andrew Truscott – Accenture – Co-Chair**

That's good. I'm reading it.

**Arien Malec – Change Healthcare – Member**

Whoever is on the screen, scroll down a little bit. The actual… Go back up. That's where the HITAC recommends that ONC create an affirmative set of obligations that we presume to address information blocking requirements and those obligations become technical requirements, e.g. standing up a FHIR-based API gateway that provides access to totality of patient record where not always prohibited, implementing patient matching and linking, and making data accessible for permissible purposes for the common policy framework.

**Andrew Truscott – Accenture – Co-Chair**

Okay. Arien, I must confess, I'm slightly challenged by this because we seem to be looking at – I'll just keep using safe harbor, "If I meet these obligations, then I'm not implicating the information blocking rules." From a particular position of a certain actor. It seemed to be a subset of the intent of Cures. I'm not sure that we want to put the onus upon a set of obligations that would meet the intent of Cures when we have the regulations and Cures itself that you need to conform to. Am I making sense?

**John Kansky – Indiana Health Information Exchange – Member**

Yeah, I think you are. I agree. Again, I think it comes back to the idea of as much as we want to incentive this behavior – you spelled it out very nicely – we want to do this. That just doesn't mean that they're not information blocking somewhere else in their business and behavior.

**Arien Malec – Change Healthcare – Member**

I completely agree with that. This is more about a presumption in the absence of other – maybe I should have written those words. I think it's a good thing to have an affirmative set of obligations that create a presumption of compliance in the absence of other negative behavior.

It's not a safe harbor in the sense that if I do X, Y, and Z then nobody can ever come after me, but if it's a quasi-safe harbor or moral equivalent of a safe harbor that says if I do X, Y, and Z and clearly, we need to debate what X, Y, and Z is and I don't think we need to debate, I think the TEFCA Task Force needs to debate that, but if I do X, Y, and Z, then I should be – if I do X, Y, and Z in good faith, I should be addressing all of the requirements of information blocking.

Let me put it this way – there should be a TEF, such that if I do X, Y, and Z in good faith, I am addressing all my obligations in information blocking. If there isn't a TEF, such that if I do X, Y, and Z in good faith, then I'm addressing my – then why do we have a TEF?

**Andrew Truscott – Accenture – Co-Chair**

That's a very good question. We could inadvertently create three tiers of bureaucracy, which doesn't seem to be the intent of what we should be doing either with simplification. Why would we have the information blocking regulations if actually we're saying, "Well, comply with TEF and you're complying with Cures."

**Arien Malec – Change Healthcare – Member**

I'm putting it the other way around. I'm saying if TEF isn't the easy button to comply with Cures, then why do we have a TEF?

**Andrew Truscott – Accenture – Co-Chair**

I think that's a very good question. Well, because Cures mandates a TEF and that's why we have a TEF, because Cures asks for one. Is Cures implying that a TEF demonstrates the appropriate behaviors that Cures is trying to create?

**Mike Lipinski – Office of the National Coordinator for Health Information Technology - Staff Lead**

Can I just jump in real quick? Mike Lipinski with ONC.

**Andrew Truscott – Accenture – Co-Chair**

Please do.

**Mike Lipinski – Office of the National Coordinator for Health Information Technology - Staff Lead**

Just to give you a little technical distinction between info blocking and TEFCA – so, TEFCA is as Congress, as you guys were alluding to, required it, but it was to connect disparate networks. It's going to give providers an opportunity to query across networks, even push information across networks, versus if you go without –

**Andrew Truscott – Accenture – Co-Chair**

Michael, you're breaking up. Come back to us. You're back to us now. Carry on.

**Mike Lipinski – Office of the National Coordinator for Health Information Technology - Staff Lead**

Okay. So, just to talk a little bit about the landscape of info blocking in place with APIs – with that, depending on how it scales and how you're trying to get the information, there may be some entities out there that may be able to establish connections with all endpoints and pull the information for you if you made a request. With TEFCA and what Congress was looking for was to bring all the networks together.

So, what you could do then is through the QHINs, what we're hoping for, is you can query them all to see if your information is out there. Hopefully, that will be an efficiency for both providers and patients. So, there are some technical differences between a landscape without TEFCA and just info blocking and a landscape where you have both TEFCA and info blocking. I just wanted to call that out.

**Andrew Truscott – Accenture – Co-Chair**

John Kansky has patiently had his hand raised. John?

**John Kansky – Indiana Health Information Exchange – Member**

Actually, what was just said was extremely helpful because I, again, see – these words might be slightly offensive to some, but I think that TEF was created somewhat, echoing what I just heard, to create a perceived market failure and establish interoperability. Meanwhile, information blocking is perceived as a problematic behavior that exists in the industry. So, I guess I saw those things as fairly separate – related, for sure, but separate.

**Andrew Truscott – Accenture – Co-Chair**

Thanks, John. Arien?

**Arien Malec – Change Healthcare – Member**

So, regardless of what Congress may or may not have intended the TEF to do, I don't see any objection to this notion – I don't see that as being a reason not to implement the proposal that's outlined here, which is an affirmative set of obligations that we presume to address information blocking requirements.

Or put another way, if a provider or an EHR vendor doesn't have a playbook to write to, then they're in the position – so, Steven, I'll pick on you – if CPMC doesn't have a clear playbook to play by, then you're in a position where, I don't know, Oakland Family Practice can complain to CPMC about information blocking behavior – there's no clear grounds that you could say, "I did X, Y, and Z, and therefore I'm not an information blocker."

All you can do is say, "My behavior conforms to exception one, two, three, four, five, six, or seven," which is a very different kind of defense to the charge. This is not by way of trying to give providers or EHR vendors a free pass or an out card. It is saying that it would be a good thing – maybe the Task Force disagrees that it would be a good thing, but it is saying it would be a good thing if there were a set of affirmative obligations that in the absence of other considerations offers all of the things that Cures want to offer – the totality information for all permissible purposes, addressing security and privacy with a reasonable free structure.

**Steven Lane – Sutter Health – Member**
So, it's not quite a presumption of innocence.

**Arien Malec – Change Healthcare – Member**
That's right.

**Andrew Truscott – Accenture – Co-Chair**
Okay. John Kansky?

**John Kansky – Indiana Health Information Exchange – Member**
Thank you. I was just getting kind of excited because I'm really seeing the wisdom of what Arien is suggesting and the nuance for the reason that I think this gets to a lot of discussion we had on our workgroups in terms of the implementability and understandability of the regulation. I think if there were a set of, "Hey, by the way, read the regulation, don't break any of these rules, but if you do these things, you're probably in good shape," would be extremely helpful to the industry trying to comply with the regulation.

**Andrew Truscott – Accenture – Co-Chair**
Arien, I am worried that it might be a nuance too far. We need to be a bit more deliberate and explicit because I'm not necessarily hearing there is consensus across the Task Force at the moment for this recommendation, although Mr. Kansky does appear to be lauding the nuance in here. I'm not sure that's shared. Go ahead, Cynthia.

**Cynthia A. Fisher – WaterRev LLC - Member**
Hi, it's me Cynthia. I can't raise my hand because I'm on my cellphone at the moment. As I'm listening to this and I was just reading last night a section in the preamble about the TEFCA RFI, which falls under information blocking – excuse me, which falls under, I believe, assurances.

**John Kansky – Indiana Health Information Exchange – Member**
That's right.

**Cynthia A. Fisher – WaterRev LLC - Member**
So, as described by Arien, I think if we tied into this idea that health IT providers who provide these services or a HIM that provides these services can use their participation in the TEFCA as an assurance that they're not going to take any actions that constitute information blocking or any other actions that might inhibit appropriate exchange access and use of EHI. I do agree that that doesn't mean they couldn't still be information blockers. It more satisfies the assurance CMC. Am I understanding correctly, Arien?

**Andrew Truscott – Accenture – Co-Chair**
Yes, I think so.

**Mike Lipinski – Office of the National Coordinator for Health Information Technology - Staff**

**Lead**

I just wanted to jump in – just to clarify, there is a request for information that's specific to the conditions of certification for assurances, which applies only to developers who have products certified in the program and then there's also the request for information more broadly for information blocking that would apply an exception to everybody that information blocking would cover.

**Cynthia A. Fisher – WaterRev LLC - Member**

Okay. That helps. But I do know a health IT developer could also be a HIM as well, right?

**Andrew Truscott – Accenture – Co-Chair**

Yes. So, Arien, in your text and I've started looking at this in the consolidated document where it now resides – are you intending this to be specifically targeted at technical requirements? Arien?

**Arien Malec – Change Healthcare – Member**

Hitting the mute button would be useful. So, there is the TEF, which, as Michael says, really addresses intra HIM requirements. What I'm asserting – it's a position – is that there should be, for providers and for EHR vendors an easy button. Again, not a get out of jail free card, but a default mode that addresses all of the requirements.

My presumption, just to outline the thinking, my presumption is that easy mode would be generally addressed through certification offering certified capabilities and participating in a QHIN and the combination of those activities would create an affirmative set of obligations with the presumptions that I'm describing.

Again, to Steven's point, that doesn't mean that I'm doing other nefarious activities or going around skirting the rules, etc., but it does give me a clear target to shoot for. My presumption was the clear target would be the combination of certification and participation with the QHIN that also participates with the TEF.

**Andrew Truscott – Accenture – Co-Chair**

Thanks, Arien. Anil?

**Anil K. Jain – IBM Watson Health – Member**

Yeah. I may be overreading this, but when I think about affirmative obligations, it just sounds like another word for saying things that are going to be mandatory. I wonder whether we could accomplish the same thing that Arien is describing, which I think is a cool concept, but it sounds more like if you implement the following things and create a best practice, then as an industry, you're less likely to be inadvertently information blocking.

I wonder whether we need to specifically spell that out or simply say that those who are going to be in the business of implementing or those who are going to be in the business of interpreting these things and saying to an actor, "Here's what you need to do," are in a better position to figure that out as opposed to us trying to put it into a rule and say that we

need to have ONC spell out a very specific set of obligations.

I think that's kind of backwards, at least in the way I'm reading it. I could be wrong here, but it just seems like we're adding some more criteria to certification requirements. I'm not sure what this accomplishes. It sounds like a best practice. It sounds like an implementation issue.

**Andrew Truscott – Accenture – Co-Chair**
Thanks, Anil. John Kansky?

**John Kansky – Indiana Health Information Exchange – Member**
I'm appreciating both sides of the argument. It helped me to type it out, so, I put it in the comment section. We don't want to add more regulation, per Anil's comment, we don't want to be prescriptive – that's my personal view. Is it helpful, the best practices was kind of helpful. Is it helpful to think of these affirmative actions as something an organization can do to demonstrate that they're clearly trying to comply with information blocking?

This list of things would be, "Oh, if you're doing these things, obviously, you're sharing information. You understand the spirit of the law and you're aspiring to never information block." So, it's sort of a way to demonstrate that you're clearly not negligent. I think No. 1, why would we do that? It gives organizations that I think are going to be very fearful of this regulation just in trying to understand it and know what they're supposed to do some comfort. No. 2 is that if that list of affirmative practices was well-chosen, we're going to move the industry forward in terms of sharing information.

**Andrew Truscott – Accenture – Co-Chair**
Thanks, John. As I look at this, I hear exactly what Anil was saying with the use of the term obligations and affirmative set, etc. My perception, whether that's the intent, but my perception is the framework is there to provide a way of enabling information sharing and a framework, by definition, is not a series of mandates or necessarily obligations, but a contract for you to adhere to.

If I was a bad person, if I was wanting to make sure that I could information block whilst not implicating the information blocking rules, then the chance that I could leverage TEF and comply with the framework while still not enabling information sharing, I think there's an opportunity there without making tech so prescriptive technically that it kind of becomes a mandate.

I'm not sure that's the intent of it. It's an intent to enable organizations that wish to be good actors to be good actors as opposed to provide a crutch for bad actors to be bad, I think. I welcome input from any of the other members of the Task Force as well who have so far not said a lot on this. Also, Steven, you were very vocal at the beginning.

**Steven Lane – Sutter Health – Member**
I'll chime back in again. I'm struck by John's dawning appreciation of this. I think I also see some small value in this, but I do think it's small and soft, but it does encourage people to go

to do the right thing and to engage in a positive matter. I don't think it really provides them any protection or would be decisive in any charges of information blocking. So, I don't think it does much harm and it might do some good. I can sign on to it given the narrow scope that's been defined.

**Andrew Truscott – Accenture – Co-Chair**

John Kansky?

**John Kansky – Indiana Health Information Exchange – Member**

Yeah. Acknowledging that this list would be – I don't want to be on the workgroup that has to come up on these lists of affirmative things. So, it's conceptually much easier to talk about than it is to implement. So, my question is sort of in the absence of this, do others feel that this regulation is going to be somewhat easy to – if we don't have a safe harbor, we don't have a list of affirmative actions or affirmative behaviors, are others concerned – I am – that this is going to be a very difficult regulation to understand and comply with based on its structure of just NIM'ing exceptions?

**Valerie Grey – New York eHealth Collaborative – Member**

This is Val. I'm sorry I can't raise my hand. I'm very concerned about the complexity of compliance and really sort of understanding all of this. I think about some of the small practices and small neighborhoods. They need some help. I think that what we're talking about here is a good balance. I do think we need to help people understand. If we can spell out the kinds of things they need to do in order to show that they're intending to comply and they're providing and sharing all the information, I think it would be extremely valuable. But I'm really John. I don't want to serve on that one.

**Andrew Truscott – Accenture – Co-Chair**

Mr. Kansky, you're next in line and there is a pile up of people behind you. John, is your hand inappropriately raised?

**John Kansky – Indiana Health Information Exchange – Member**

Sorry, I was away from my mute button. I didn't mean for my hand to be raised.

**Andrew Truscott – Accenture – Co-Chair**

Okay. Aaron Miri?

**Aaron Miri – The University of Texas at Austin, Dell Medical School and UT Health Austin – Member**

Okay. So, to answer that question do I think it's going to be difficult for organizations to comply, especially providers, I would say we all need to think back to the rollout of meaningful use stage one and how it was a voluntary and then ratchet it up to mandatory over time, over years.

I would say that one of two things is happening, either safe harbor out of the gate with the affirmative actions or a slow role as to, "Hey, let's get everybody on the same page, answer

any questions, partner together to make it happen," but we all have had to go through meaningful use without any kind of safe harbor attached to it. We just did it over time. There are ways to do this without having to have those mechanisms in place. It just needs to be done pragmatically.

**Andrew Truscott – Accenture – Co-Chair**
Thanks, Aaron. Anil?

**Anil K. Jain – IBM Watson Health – Member**
Yeah. I see both sides as well. I struggle with the idea that – maybe I misunderstood what Arien, where he wanted to describe this particular requirement or this recommendation – if it's not part of the regulatory tax and we're not mandating it and it's simply asking ONC to come up with an implementation guide, I think that's great. But what I worry about is trying to put regulation around mandatory steps.

I think we have to be very careful that we not add burden and it may seem like right now sitting here that we're making it simpler, but if we are too prescriptive, it might actually increase the burden as opposed to helping people have some degrees of freedom of how they want to do something as long as they prevent inappropriate behaviors that are spelled out with that balance.

I think we could accomplish what a lot of you are all saying by simply having a companion implementation guide or some sort of best practices that could help those struggling actors comply with these things. I really worry about trying to put this in regulatory text.

**Andrew Truscott – Accenture – Co-Chair**
Thanks, Anil. Anil, if it's your suggestion that we provide that recommendation that text should be more along the lines of being an implementation guide, then exactly what the language is that Arien drafted.

**Anil K. Jain – IBM Watson Health – Member**
First, I'm talking out loud as I'm thinking about this. The first thing is I think if you're going to come up with a series of affirmative behaviors or affirmative obligations, then it does need to be part of an implementation, best practices type of guide and not part of some safe harbor.

I do think that it seems to me that's not the intent of what we were being asked to comment on, at least the way I read it was if the participation in a common agreement would somehow give an actor the ability to use that as an exception for information blocking, I think the answer there is for all the reasons we've been discussing, the answer is no. Then the question is should we as a committee recommend that ONC put together some series of affirmative obligations as was called out that would create an environment of safe harbor.

I think the answer there is no. I think if we all agreed that these are the reasons why someone should be called out for information blocking and we agreed that it's going to be tough to implement this. Why not have an obligation of ONC to help with an implementation

guide as opposed to making the rules more complicated?

**Andrew Truscott – Accenture – Co-Chair**
Okay. Thanks, Anil. That's helpful. I think Anil focuses upon the ability of test compliance to be an affirmative attestation. I get where you're coming from. Mark, it might be helpful – can you possibly give us a bit of elucidation from the ONC camp about the differences between what TEF's looking to achieve, what the regulations are looking to achieve, what the exceptions are looking to achieve, etc., maybe shed some more light from your cave on that.

**Mark Knee – Office of the National Coordinator for Health Information Technology - Staff Lead**
Yeah. Maybe I'll try to focus since I know that we have about 20 minutes left. The focus I want to point the group in and I think this is a great discussion and helpful to hear these thoughts is that we have the two RFIs. So, on the screen right now, we have the request for information regarding assurances. This is in the conditions of certification assurances.

So, this is specific to health IT developers who have products certified under the program and would right here at the bottom, we'd say we request comment as to whether certain health IT developers should be required to participate in the TEFCA as a means of providing assurances to their customers and ONC that they are not taking actions that constitute information blocking or any other action that may inhibit the appropriate exchange, access, and use of EHI. Then we flag specific criteria here that has to do with accessing exchange of EHI. So, I want to focus some of the conversation on specifically that question.

Then there's a second question in the information blocking section. Katie, if you're able to pull down to page 497 of the same document, that's where we have that. That's more of what you're talking about in this discussion right now is whether there should be a broad discussion in information blocking, but we do talk about the need to be narrow. Let me pull my screen down to 497. I want to make sure I get the language right. PDFs are slow. I'm working off a separate document. I'm having trouble with my PDF. You search for narrowly – sorry, hold on one second.

Basically, we say that we want to focus specifically on requirements of the TEFCA and it's not going to be overly broad to stretch beyond those specific requirements necessarily to comply with a common agreement and that would not qualify for the exception. I guess I just want to make sure that we're focusing on these two separate requests for information in the discussion. That's all I want to say, Andy. Is that clear to everybody?

**Andrew Truscott – Accenture – Co-Chair**
It wasn't as clear as I hoped for, Mark.

**Mark Knee – Office of the National Coordinator for Health Information Technology - Staff Lead**
Okay. So, basically, I guess what I'm trying to clarify is there's a request for information in the assurances section of the conditions of certification, where we're asking whether it should be

a requirement for certification that certain developers participate in the TEFCA and then we also have a separate request for information in the information blocking section, where we're considering whether complying with the common agreement narrowly framed such as the contract terms, policies, or other practices that are not strictly necessary to comply with the common agreement would not qualify for the exception, but that it would be an exception if you participated in certain requirements of the common agreement.

**Andrew Truscott – Accenture – Co-Chair**

That second RFI is what we've been discussing so far, what have Arian has drafted text doc. I must confess – I want the Task Force to chip in at this point because I want to make sure we are reflecting everybody's viewpoint – I think I'm hearing the sentiment from the Task Force that we don't believe that TEFCA, an attestation of compliance with TEFCA should be an information blocking exception. That's what I'm hearing and I'd like the Task Force to comment about whether that is what you're saying.

**Mark Knee – Office of the National Coordinator for Health Information Technology - Staff Lead**

It should not be an exception.

**Andrew Truscott – Accenture – Co-Chair**

Sheryl Turney.

**Sheryl Turney – Anthem Blue Cross Blue Shield – Member**

That's what I'm hearing. I agree with not having anything more that would further complicate people's understanding in terms of what they need to. I think the exceptions are exceptions in that what is in TEFCA is the basis for how the exchange should occur. Unless there's something additional that we would need to add to an exception, I'm not sure that clarification is really required as part of this.

**Andrew Truscott – Accenture – Co-Chair**

Okay. Thanks, Sheryl. Arien?

**Arien Malec – Change Healthcare – Member**

I will defer to the wisdom of the Task Force. I will put out maybe two pieces, two motivating statements. One is if you're worried about regulatory requirements, I'd be equally worried about what is or isn't information blocking getting settled through litigation and through the threat of litigation more than I would – if I were a compliance officer, I would prefer to have a clear set of obligations to comply with than have a set of exceptions knowing that at some point, those exceptions are going to get litigated. That's No. 1.

No. 2 on more of the positive side, I do believe that having a positive set of obligations will drive industry in the right direction because it will be the easiest, simplest way to get the compliance officer off your back to offer NEPI to patients that meet certification requirements, to provide an API to providers and other actors that meet certification requirements and to make data available for permissible purposes.

So, on the one hand, I think if you're worried about regulatory overreach, I'd also worry about legislative obligations that are defined through litigation and on the other hand, if you're worried about encouraging, not discouraging interoperability, never underestimate the power of a scared compliance officer to force organizations to do the right thing.

**Andrew Truscott – Accenture – Co-Chair**

Thanks, Arien. Do you think, though – do you think TEF as currently drafted covers every single aspect of information blocking regulation?

**Arien Malec – Change Healthcare – Member**

So, I do not right now. I would state this a different way, which is that if we as an industry can't figure out whether it's implementation guidance or others a public/private framework that addresses the information blocking requirements, then we probably deserve the litigation that will be coming out way.

**Andrew Truscott – Accenture – Co-Chair**

Thanks, Arien. Sasha, have you got any input or contribution at this point?

**Sasha TerMaat – Epic – Member**

Yeah. I've been thinking about the two questions posed in the RFI. The first is whether it should be an obligation of certain certified modules and the developers of those modules to participate in the trusted exchange framework. We haven't discussed that as extensively during today's conversation, though certainly some of our themes touch on it. I will propose that I don't think that would be an appropriate requirement for several reasons.

First of all, I think it's challenging because the Trusted Exchange Framework doesn't necessarily align in its current incarnation with the different modules that are proposed, but at a more fundamental level, I think the intent of Cures was to create a voluntary framework and tying it to certification in that way doesn't seem to align with that voluntary nature of it.

Regarding the question of whether establishing something that could be done proactively to show intent to not information block and, in fact, intent to information share, I am very supportive of that. I think about how entities, actors in the space would try to prove this. I don't want that to be settled via litigation, which I see as an expensive and undesirable option for the industry.

I would prefer to see it be able to be shown to be encouraging the behaviors that we want in a proactive way. We struggle with that because of the construction of Cures. It's led us to this construction that has exceptions rather than just a list of desired behaviors and defining a lot of things in the negative, which does make it more challenging. It's harder to prove that something does not happen than it is to prove that something specifically did happen.

And for that reason, I do think there's advantage to all construction that says if certain things did happen, that is an advantage. It is a statement of good intent. It shows a positive

behavior on the part of the actor and it also gives us an opportunity in constructing that to discuss as an industry to discuss what those behaviors are proactively that we decider in a positive way rather than in a negative definitional way.

I'd go as far as to say I will be on that Task Force. I think the conference in a non-litigation space as to what the behaviors that are desired are and how those would be defined and achieved across the industry is an important initiative. I agree with Arien that I don't think it's desirable to define that through litigation.

**Andrew Truscott – Accenture – Co-Chair**

And we believe that TEF is the right place to prescribe those positive behaviors.

**Sasha TerMaat – Epic – Member**

No, I don't necessarily think the Trusted Exchange Framework is a necessary place to do it. I think it could be one approach. If we come with a framework and an agreement that met the expectations of positive behavior that we came to from consensus, that might be it. It might be one part of it. I don't know that is a requirement for my support of the idea of some sort of statement of positive behaviors that it necessarily be the Trusted Exchange Framework.

**Andrew Truscott – Accenture – Co-Chair**

Okay. What role do you think that TEF should have?

**Sasha TerMaat – Epic – Member**

I don't think – I guess this maybe goes back to the previous conversation – I still think that until we know what the Trusted Exchange Framework is, it is still premature to specifically link it to information blocking in a particular way. It might be reasonable to say that there are certain things that TEF might be, which we would like to encourage in the vein of the conversation today in terms of saying we'd like to identify certain encouraged behaviors, but I don't think that we know enough about what the Trusted Exchange Framework will evolve to be as a voluntary framework to specifically say that there's a link to information blocking.

**Andrew Truscott – Accenture – Co-Chair**

Thanks, Sasha. I'm just going to flip back through other members of the Task Force as well. John Kansky, given that conversation we just had, what do you think around almost staying new to this juncture on the role of TEF?

**John Kansky – Indiana Health Information Exchange – Member**

I was just about to type into the comment box before you called on me that I could not have said it better than what Sasha just said. I was nodding my head to her entire comment. It's a bit of a copout, but I'm going to agree with her.

**Andrew Truscott – Accenture – Co-Chair**

Aaron Miri?

**Aaron Miri – The University of Texas at Austin, Dell Medical School and UT Health Austin – Member**

I totally agree. This is Aaron. We've got to go across this pragmatically. We don't want to add any additional further burden of complexity to this, but I agree with what Sasha said.

**Andrew Truscott – Accenture – Co-Chair**

Thanks, Aaron. Slightly concerning, Arien appears to have dropped from the call.

**Arien Malec – Change Healthcare – Member**

I have not dropped from the call. I am patiently being silently, deliberately being silent. So, I just feel like there's a seed of an agreement here that's outlined by Sasha's comments, by this discussion. If I pull the sense of the Task Force, I hear on the one hand, a concern that we make affirmative obligations a burdensome regulation.

On the other, I think a concern that we define obligation through litigation and nobody wants that either. There's something to the idea of affirmative obligations. I'm also not hearing that the Task Force believes that we have the defined set of affirmative obligations yet. Maybe that suggests that the Task Force recommendation to ONC is to work with industry to create a voluntary consensus set of those obligations.

**Andrew Truscott – Accenture – Co-Chair**

I think that could well be the case, Arien. I'm hearing a bit more than that as well, that there's a certain level of sentiment around what TEF is and what TEF is not in relation to implication of information blocking. I wonder whether actually we should try and write down that very small list of what TEF is and what TEF isn't. That's almost a basis of the recommendation upwards to our lords and masters about saying this is quite the conceptualization of TEF. As far as we're concerned, how about that?

**Arien Malec – Change Healthcare – Member**

I agree with that. Again, I will repeat my comment that if the combination – if we have ONC with a set of certification requirements and a set of Trusted Exchange Framework requirements, and the combination of those doesn't address information blocking, that's a really good sign that we actually have unnecessary regulatory burden. We're asking for a whole bunch of compliance activities and we're not actually getting the good that we're looking for.

**Andrew Truscott – Accenture – Co-Chair**

Thanks, Arien. That's very helpful. I think we are going to be leaning heavily on the entire Task Force to bring – to try and get through the 100 words or something that describes that sentiment over the next few days. I'm going to take a cut at some of the wording and then I'm going to hand it out to broader. Mike, Adcock, have you got any contribution on this one? You're quite quiet so far. I can see him on. It's fine. Let's move to public comment at this point, please.

**Lauren Richie – Office of the National Coordinator for Health Information Technology -**

**Designated Federal Officer**
And Operator, can we open the public line?

**Operator**
Yes, thank you. If you'd like to make a public comment, please press star-one on your telephone keypad and a confirmation tone will indicate your line was in the queue. You may press star-two if you'd like to remove your comment from the queue. For participants using speaker equipment, it may be necessary to pick up the handset before pressing the star keys.

**Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer**
Thank you. Do we have any comments in the queue?

**Operator**
No comments at this time.

**Lauren Richie – Office of the National Coordinator for Health Information Technology - Designated Federal Officer**
We'll check back a few minutes before we adjourn. Andy?

**Andrew Truscott – Accenture – Co-Chair**
Cynthia, there's been quite significant discussion as we've gone through the last hour around this. I think some really good discussion. It's not like we're in two camps. There's actually a very swirling discourage that we're undertaking at the moment. Have you got anything else to add based upon some of these positions that have been discussed and moved? I take that silence as none. Okay, Denise?

**Denise Webb – Individual – Member**
Yes, I had to get my mute button off. I don't really have anything substantive to add. I appreciated what Sasha contributed and thought she was on point on some of the things that we need to be concerned about.

**Andrew Truscott – Accenture – Co-Chair**
Thanks, Denise. Any other public comments or any public comments coming in on the line?

**Operator**
No comments at this time.

**Andrew Truscott – Accenture – Co-Chair**
Thanks. Anil Jain?

**Anil K. Jain – IBM Watson Health – Member**
I just wanted to double-back on something. I wanted to make sure I didn't misunderstand.

The question of litigation came up. I think what I was hearing – certainly, I'm not an expert in this area, but what I heard Sasha and Arien both say is that if you had a list of sort of affirmative obligations that it reduces the risk of litigation, my understanding is that we are still going to have these exceptions in play.

There are still going to be areas for interpretation and the complaint process is not being impacted by what we're saying here. I just want to make sure we're not missing something. I need to think about this some more. Are we suggesting that if you had a list of things that you do that would somehow shield you from litigation – is that what we're putting in here?

**Arien Malec – Change Healthcare – Member**

Let me put it this way – again, I'm just imagining an API gateway that offered data via FHIR, both the patients, providers, and other actors for permissible uses. If I were CPMC or University of Austin o r name your health system or name your evil information blocking health IT vendor and there was a complaint, I would at least be able to point to hey, in every case where I got a request through the appropriate channel that had the appropriate trust enabled for it, I responded in good faith with the information that was desired, that the presumption would be in the absence of other nefarious behaviors that I was not, in fact, information blocking.

There's a lot there. There are a lot of assumptions there. The assumptions is that API provides access to totality of information, that it's in a reasonable format, that the trust framework is sufficient for actors getting what they need. But I do very strongly believe that it would be helpful for industry to have a well-defined punch list of, "I've got to go do X, Y, and Z. If I do X, Y, and Z," and I respond in good faith to every request that's being made to me.

And I'm not throwing up CHAF and I'm not throwing up, "Well, HIPAA this and blah, blah, blah that," that if somebody registers a complaint to OIG, OIG asks me and I say, "Look, I've got this API gateway. I've got all the logs. I can demonstrate who made the request and who made the response, yeah, generally OIG would say, "Okay."

**Cynthia A. Fisher – WaterRev LLC - Member**

This is Cynthia. I'm traveling. Again, it's hard for me to raise my hand. I just get really concerned for patients and for physicians getting access – I can use an example of a direct primary care physician that just couldn't – his electronic system, the major hospital system in the city would not share back and forth. So, it was very difficult to make his patient population be able to get appropriate information, a lot of hurdles, a lot of information blocking.

My concern is that we provide an out. I think if you do the right thing and you make it open and you deliver, yeah, you could have standards, but it doesn't release anybody on accountability because there are all sorts of ways to provide protectionism here and nuance. I don't think that's our job as our committee. I think our committee is to deliver patients and other providers getting full access to necessary information to improve quality of care, appropriately diagnose, and appropriately address what Congress was so concerned about

that has happened.

We see people being very concerned and entities being very concerned about EHR vendor blocking as well as providers and this is really – the accountability needs to be open and able to be enforced. I firmly believe we would be doing the American public a disservice if we didn't go with that intention.

**Andrew Truscott – Accenture – Co-Chair**
I think Cynthia, to paraphrase what you're saying, your concern is we inadvertently create a screen for access to hide behind.

**Cynthia A. Fisher – WaterRev LLC - Member**
Well, it's not our role. Our role is to make sure the information is delivered. I am concerned that we're allowing a tool and we're trying to do protectionism and we're trying to give safe harbor to actors that have caused this very problem and why we're spending all these hours trying to deliver access for the American public. I think any way we try to do a screen, to your point, is problematic.

**Andrew Truscott – Accenture – Co-Chair**
Got it. Thank you for that. Have we got any public comments coming in on the line?

**Operator**
No comments at this time.

**Andrew Truscott – Accenture – Co-Chair**
Any other members of the Task Force? Any closing comments? Okay. Michael, myself, probably Arien and Cynthia – just with that punch list to rephrase of what we believe the TEF should be and shouldn't be with response to information blocking and get that out to the broader Task Force for consideration and deliberation. Meanwhile, I, like I'm sure many people, look forward with baited breath to Malec and Kansky in the chair at the TEF Task Force next week.

**Arien Malec – Change Healthcare – Member**
We are absolutely excited. We cannot express our degree of passionate excitement.

**Andrew Truscott – Accenture – Co-Chair**
I can feel it radiating from Nashville and Indianapolis in equal measure.

**Arien Malec – Change Healthcare – Member**
Oakland, Emeryville.

**Andrew Truscott – Accenture – Co-Chair**
Close enough. Has anyone got any other comments this week as we close?

**Denise Webb – Individual – Member**

This is Denise. I was just saying thank you to John for stepping up to fill my Co-Chair position since I'll be out of the country. Appreciate him taking that.

**John Kansky – Indiana Health Information Exchange – Member**

I'll get you back later.

**Andrew Truscott – Accenture – Co-Chair**

Everyone, thank you ever so much for your time. Look forward to speaking to you soon. Bye, bye.