



Meeting Notes

Health Information Technology Advisory Committee Trusted Exchange Framework and Common Agreement Task Force May 24, 2019, 12:00 p.m. – 1:30 p.m. ET Virtual

The May 24, 2019, meeting of the Trusted Exchange Framework and Common Agreement (TEFCA) Taskforce of the Health IT Advisory Committee (HITAC) was called to order at 12:00 p.m. ET by Cassandra Hadley, Designated Federal Officer, Office of the National Coordinator for Health IT (ONC).

Cassandra Hadley conducted roll.

Roll Call

Arien Malec, Co-Chair, Change Healthcare
John Kansky, Co-Chair, Indiana Health Information Exchange
Laura Conn, Centers for Disease Control and Prevention
Cynthia A. Fisher, WaterRev, LLC
Anil Jain, IBM Watson Health
David McCallie, Individual
Carolyn Petersen, Individual
Mark Roche, Centers for Medicare and Medicaid Services (CMS)
Mark Savage, UCSF Center for Digital Health Innovation
Sasha TerMaat, Epic
Andrew Truscott, Accenture
Sheryl Turney, Anthem Blue Cross Blue Shield

MEMBERS NOT IN ATTENDANCE

Noam Arzt, HLN Consulting
Steve L. Ready, Norton Healthcare
Aaron Miri, The University of Texas at Austin, Dell Medical School, and UT Health Austin
Grace Terrell, Envision Genomics, Inc.
Denise Webb, Individual

ONC STAFF

Zoe Barber, Staff Lead
Michael Berry, SME
Cassandra Hadley, HITAC Back Up/Support
Alex Kontur, SME
Kathryn Marchesini, Chief Privacy Officer
Kim Tavernia, SME



Call to Order/Roll Call

Cassandra Hadley turned the meeting over to **Arien Malec**, co-chair.

Arien Malec welcomed the members, noted that the task force got through the majority of the minimum required terms & conditions (MRTC) and the Qualified Health Information Networks (QHIN) Technical Framework (QTF) during the last meeting.

He reviewed the goals for the meeting, which were to prioritize and consider the key questions gathered from the task force. He noted that he and **John Kansky**, co-chair have proposed a deadline extension to the HITAC co-chairs. The task force will target June 19 to make draft recommendations, and July 11 to make final recommendations. He noted that this request has not yet been granted.

John Kansky reviewed the process the task force followed previously and referred to the matrix that the task force has been working from. After his review, he turned the meeting over to **Arien Malec** to discuss issue prioritization.

Discussion Questions - Overview and Prioritization

TIER ONE

Arien Malec reviewed the list of the tier one issues within the matrix by sharing some discussion history for each issue from the previous meeting.

Discussion: Tier One Issues

- **Andy Truscott** noted that the list was long and sought to understand the core principles that the task force is trying to achieve. He also referred to **Arien's** previous comment about creating new obligations. He also commented that the task force should address the question of whether they should be laying down the framework that demonstrates how new obligations can be met, as opposed defining new obligations or dictating that they are done a certain way.
 - **Arien Malec** answered that the original TEF task force recommended that **ONC** establish broad and clear objectives and then delegate to the recognized coordinating entity (RCE) and **QHINs** the mechanisms for achievement. He noted that **ONC** seemed to listen to the recommendations and came up with a minimal set of recommendations. He suggested that the task force should consider if it is the right minimal set or determine if a different balance can be struck.
- **Mark Savage** referred to the individual access services provision and noted that he had a broader question about the definition of individual access. The text that was captured was a good start, but he felt the task force should revisit it to broaden the definition in the future.
- **David McCallie** commented that the task force should make it clear how the TEF integrates with the information blocking notice of proposed rulemaking (NPRM) to ensure definitions and policies remain in sync.
 - **Arien Malec** commented that there is no information blocking implication for being a participant who works with a **QHIN**, so it's not clear what obligations of information blocking are being addressed through participation in the Trusted Exchange Framework and Common



Agreement (TEFCA). He reminded the task force to avoid the mechanics of information blocking.

TIER TWO

Arien Malec reviewed the list of the tier two issues within the matrix. He shared discussion history from the last meeting related to each issue.

Discussion: Tier Two Issues

- **David McCallie** referred to the security tagging provision asked if security tagging required. He noted that a downstream obligation far beyond just the creation of the tag is created in this circumstance.
 - **Arien Malec** commented, referring to ‘sensitive tagging’ or ‘data tagging,’ and noting they engaged in previous discussions within the HITAC where it was noted that the standards were sufficient, but there was no policy for the standards. He went on to note that they made recommendations for ONC to address this.

Arien Malec led the discussion through the list of the Tier three issues within the matrix by sharing some discussion history for each issue from the previous meeting.

There was no discussion regarding the tier three issues.

Arien Malec transitioned to reviewing tier one issues in detail.

BROAD GOALS

Discussion

- **John Kansky** noted that he agreed with Arien in that the general sentiment is captured within the recommendation and asked if it was worthwhile wordsmithing now or later.
 - **Arien Malec** suggested now was the time for some nuance and encouraged members to share to refine the recommendations.
- **John Kansky** referred to the second bullet about ‘presume to address’ and noted that it should be presumed that anyone in the TEFCA ecosystem is trying to share information and not block information and asked what ‘presume to address’ means. He also noted that an important sentiment of TEFCA is that it is supposed to be a framework; words like ‘obligation’ and ‘conditions of participation’ are not necessarily linked to TEFCA. Finally, he asked where the right place is on the line between required obligations and voluntary framework for TEFCA to meet its purpose under the 21st Century Cures Act (Cures)?
- **Sasha TerMaat** noted that the possibility of choosing to not participate in TEFCA in one particular role or another might imply that information blocking should be a separate conversation. She also mentioned that she shares John’s concern about the intent of it being a voluntary framework and any implication from that perspective.
 - **Arien Malec** noted that he had not heard from the task force any presumption of participation. He also mentioned that he believed that participation in TEFCA, by default, should address some information blocking obligations.



- **David McCallie** noted that there needed to be an incentive if participation in TEFCA is truly voluntary; otherwise, why would participants feel obligated to join a QHIN?
 - **Sasha TerMaat** commented that the opposite perspective is preferable, and suggested TEFCA should offer a service rather than artificially creating a service through a regulatory obligation.
 - **Arien Malec** commented that his view of the sense of the task force is to create a pull, not a push (an incentive, not a penalty).

APPLICABLE LAW

Discussion

John Kansky led the discussion on the Applicable Law recommendation, seeking input from David McCallie from a historical perspective.

- **David McCallie** shared a case where he observed overlap between an organization he worked with and TEF regarding language specifying how they must hold themselves voluntarily accountable. He also noted that within entities that aren't regulated under the Health Insurance Portability and Accountability Act (HIPAA), there needs to be alignment between players.
- **Arien Malec** asked if there is clarity on how and when existing operations already address the obligations, or if they are creating new obligations. He also stated that all of the HIPAA obligations are placed on QHINs and participant actors in cases where they are not already business associates (BA), or covered entities (CE).
- There was an extensive conversation within the task force where concerns were raised around the possibility that the new regulatory landscape may add additional disruptions to existing agreements and business associate agreement (BAA).
- **John Kansky** stated that an inconvenient truth of TEFCA is that existing agreements would need to be modified and felt this is an extremely scary notion as it could necessitate years of legal work to complete the review of adjusted language.
- **Arien Malec** noted that it would be a flaw of the TEFCA if existing networks that have operated in good faith would then be obligated to rework contracts and suggested that to avoid this scenario the task force needs to be ultra-explicit on what is new and possibly creating appropriate paths to enable mapping to obligations under the TEF.
- **John Kansky** asked if there was a way to not force the rewriting of agreements and also not destroy TEF.
- **Arien Malec** and **John Kansky** suggested the possibility that this be framed as a process to help organizations map their existing agreements to the terms in the MRTC's.
- **David McCallie** suggested recommending a grandfather clause where existing networks already under operation are grandfathered in to avoid disruption to core operations, but for some of the newer permitted purposes, for example, individual access, contract extensions will be required.
- **Mark Savage** asked if it would help, instead of changing an existing contract, to consider adding a new contract.
 - **Arien Malec** answered that if there are genuinely new obligations, that they are excessively marked as genuinely new obligations. He went on to note that there should be a process to map existing contractual terms to MRTC terms.
- **Kathryn Marchesini** asked what would happen if an organization or entity is not covered by HIPAA or if there is not an existing agreement in place.



- **Arien Malec** commented that he feels there is a consensus among the task force members that in areas where those terms don't exist, or in obligations where they don't exist on those factors, it's appropriate to make sure that those obligations be clearly placed through contractual terms.
- **John Kansky** agreed with Arien Malec but noted within his organization, it took 15 years to build the network around a common agreement and to completely reopen that is frightening.

EXCHANGE MODALITIES AND PURPOSES

Discussion

- **Arien Malec** asked if the task force understands what is meant by broadcast query and if it is sufficient to meet the needs of the TEF? He also asked if the task force understands what is meant by directed exchange and if they believe the MRTC requirements, relative to directed exchange, are sufficient to meet the policy goals that have been articulated.
- **David McCallie** suggested the term 'directed exchange' wasn't appropriate, and the task force agreed to use the ONC term 'QHIN message delivery.'
- After much discussion, **John Klansky** asked how the task force could provide useful feedback to ONC and noted: 1) there is a lack of clarity on what is intended by the modalities; 2) there may be some contradiction between language and diagrams; 3) there may be some lack of detail, or perhaps too much specificity.
- **David McCallie** suggested the best way to move forward, given that there will be an RCE that has stakeholders with a deep understanding of the technical choices, is to develop the clearest possible functional requirements about what they should do and to stay away from any description of how they should do it. There was broad agreement on this direction.
- **Arien Malec** suggested the task force define the functional requirements for a broadcast query and targeted query and remove the QTF implementation and punt it to the RTC and the QHIN's to work out what it would actually mean in practice.
- **Mark Savage** asked for input from ONC, and there was an agreement to seek ONC's input via a presentation during an upcoming meeting.
- **Sheryl Turney** commented that the TEF should outline functional requirements that are sufficient to meet the policy goals and not rely too heavily on identifying technical solutions. There was broad agreement that this is the direction the members would like to take.

Cassandra Hadley opened the lines for public comment.

Public Comment

There were no public comments.

Comments in the Public Chat feature of Adobe

Sasha TerMaat: Re broadcast query, we weren't sure of a standard for that beyond doing a brute-force loop of XCPD/XCA query for each entity that participates. I'm very interested in if others are envisioning something else?



David McCallie: that's why we need RLS in the mix - to avoid the "spray and pray"

Next Steps and Adjourn

Cassandra Hadley adjourned the meeting at 1:30 p.m. ET