

Health Information Technology Advisory Committee

HTI-1 Proposed Rule Task Force 2023 Virtual Meeting

Group 1: Information Blocking (IB)

Meeting Notes | May 2, 2023, 10:30 AM – 12 PM ET

Executive Summary

The focus of the Group 1 Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing (HTI-1) Proposed Rule Task Force session on May 2 was to review the charge and topics worksheet, discuss information blocking (IB) defined terms and proposals, and recap the IB request for information (RFI) exclusions.

Agenda

10:30 AM	Call to Order/Roll Call
10:35 AM	HTI-1 Proposed Rule Task Force Charge and Topics Worksheet
10:40 AM	IB Defined Terms- Proposals and IB RFI: Additional Exclusions for Offer Health IT & Discussion
11:55 AM	Public Comment
12:00 PM	Adjourn

Call to Order

Seth Pazinski, Acting Designated Federal Officer, Office of the National Coordinator for Health IT (ONC), called the meeting to order at 10:32 AM.

Roll Call

Members in Attendance


Steven Lane, Health Gorilla, Co-Chair, Group 1 Lead
Steven Eichner, Texas Department of State Health Services, Co-Chair
Hans Buitendijk, Oracle Health
Hannah Galvin, Cambridge Health Alliance
Adi Gundlapalli, CDC
Deven McGraw, Invitae Corporation
Eliel Oliveira, Dell Medical School, University of Texas at Austin
Sheryl Turney, Elevance Health

Members Not in Attendance

Filipe (Fil) Southerland, Yardi Systems, Inc.

ONC Staff

Seth Pazinski, Acting Designated Federal Officer, ONC



Daniel Healy, ONC
Sara McGhee, ONC
Rachel Nelson, ONC
Cassie Weaver, ONC

Key Points of Discussion

HTI-1 Proposed Rule Task Force Charge and Topics Worksheet

HTI-1 Proposed Rule Task Force (Task Force) co-chairs, Steven Eichner and Steven Lane, welcomed Group 1 attendees. Group 1 lead, Steven Lane, reviewed the meeting agenda and charge detailed in the [May 2 meeting presentation materials](#).

IB Defined Terms- Proposals and IB RFI: Additional Exclusions for Offer Health IT & Discussion

Cassie Weaver, ONC, opened the discussion by reviewing the agenda for this portion of the meeting. She provided background and context of IB defined terms and reviewed context for proposals on “offer health information technology” and “offer health IT.” Cassie also recapped the background and context of revisions of the IB definition. Rachel Nelson, ONC, reviewed the proposed updates to the IB, “offer health information technology”, and “offer health IT” definitions. She recapped the “offer health information technology” and “offer health IT” proposed exclusions. Additionally, Rachel reviewed the IB RFI: Additional Exclusions from Offer Health IT, where ONC seeks comment on whether they should consider proposing additional exclusions from “offer health information technology” or “offer health IT” definitions in future rulemaking.

Discussion:

- Steven Eichner asked if the Task Force should provide recommendations on the term “self-develop” in the defined terms.
 - Cassie said yes, the Task Force can weigh in.
- Steven Eichner asked if ONC also included machine-to-machine exchange in exclusion 2.
 - Rachel noted ONC did not dig into that type of user.
- Deven McGraw said many of these exclusions are differentiating the use of certified health IT. She asked what if an organization or healthcare provider utilizes both certified and non-certified health IT modules and offers to pay for another provider’s access to health IT. Does that make the healthcare provider a developer?
 - Rachel said if the healthcare provider offers to cover costs for another provider, the offering provider would fall into the “offeror of health IT” category. However, the funds providing the healthcare provider would allow them to fall into the developer definition.
- Hans asked if ONC would use the same logic to categorize outsourced IT staff. These people, on behalf of the provider, are doing the work, but it is outsourced, and they are the ones providing the software.
 - Rachel noted that the scenario would likely be on a case-by-case basis. Some providers may utilize software from multiple providers but are not offerors of health IT.
 - In exclusion 3, there are consulting and legal services. Legal services and consulting organizations are not an offeror of health IT, even if they interact with it.
- Steven Lane thanked ONC for the clarifications. He does not find any definitions controversial and supports the proposed changes.
 - Steven Eichner seconded Steven Lane’s comments. He noted the presentation clarified a lot



of the questions he had and was happy to see the updates.

- Hannah Galvin asked about self-developed technology. She stated she works with a hospital system that owns and operates its own proprietary electronic health record (EHR) technology. Would that technology fall into these IB standards, even if it is not being shared with others?
 - Rachel said under the existing regulation, a healthcare provider that chooses to self-develop certified health IT, is still a healthcare provider and therefore subject to information blocking prohibitions even if they do not offer their health IT to someone else.
- Deven agreed that these are a reasonable set of clarifications. She noted it is worth clarifying in the regulatory text, in addition to the preamble, what the triggers for coverage are.
- Hans Buitendijk noted he agreed with Steven Lane and will make comments in the spreadsheet.
- Hannah said she supports modifying the date in the proposed rule. However, she wants to make sure there is a definition clarifying that United States Core for Data Interoperability (USCDI) version 1 was required prior to October 26, 2022, in the event of an audit.
 - Steven Lane said they have received reassurances that audits will not look back in time prior to the rule finalization.
- Hans noted he added a comment on updating the 10-day feasibility response timeline to start upon completion of the evaluation in the recommendations document.
- Steven Lane requested ONC and Accel teams shift the agenda so the public comment is 10 minutes prior to the end of the meeting instead of 5 minutes.

PUBLIC COMMENT

Seth Pazinski opened the meeting for public comments.

QUESTIONS AND COMMENTS RECEIVED VERBALLY

No comments were received verbally.

QUESTIONS AND COMMENTS RECEIVED VIA ZOOM WEBINAR CHAT

Deven McGraw: My only suggestion is to comment that the regulatory text should be clear that an entity that otherwise meets the definition of “offering health IT” does not exempt itself from coverage by engaging in one or more activities that are excluded from the definition of “offering” health IT

Deven McGraw: OIG is the enforcement agency - in the proposed, but not yet final rule, they have proposed to be prospective in application.

Hannah K. Galvin: Yes sorry that's what I meant - OIG.

Deven McGraw: Can someone share the link to this spreadsheet? I did not see it in the materials distributed to us in advance of this meeting.

Deven McGraw: The clarification is already in the preamble - I am suggesting that it be included in regulatory text. Preamble may not be interpreted to have the force of law.

QUESTIONS AND COMMENTS RECEIVED VIA EMAIL

No comments were received via email.

Resources

[HTI-1 Proposed Rule Task Force 2023 Webpage](#)

[HTI-1 Proposed Rule Task Force 2023 – May 2, 2023 Meeting Webpage](#)

[HITAC Calendar Webpage](#)



Adjournment

The meeting was adjourned at 11:57 AM.