

**Information Exchange Workgroup**  
**Draft Transcript**  
**June 5, 2012**

**Presentation**

**MacKenzie Robertson – Office of the National Coordinator**

Thank you. Good afternoon, everyone. This is MacKenzie Robertson in the Office of the National Coordinator. This is a meeting of the HIT Policy Committee's Information Exchange Workgroup. This is a public call and there will be time for public comments at the end. The call is also being transcribed, so please make sure you identify yourselves before speaking. I'll now go through roll. Micky Tripathi?

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Here.

**MacKenzie Robertson – Office of the National Coordinator**

Thanks, Micky. Hunt Blair? Tim Cromwell? Jeff Donnell? Judy Faulkner?

**Peter DeVault – EPIC Systems Corporation**

This is Peter DeVault for Judy.

**MacKenzie Robertson – Office of the National Coordinator**

Peter. Seth Foldy? Jonah Frohlich?

**Jonah Frohlich – Manatt, Phelps & Phillips, LLP**

Here.

**MacKenzie Robertson – Office of the National Coordinator**

Thanks, Jonah. Larry Garber?

**Lawrence Garber – Reliant Medical Group**

Here.

**MacKenzie Robertson – Office of the National Coordinator**

Thanks, Larry. Dave Goetz? James Golden? Jessica Kahn? Charles Kennedy? Ted Kremer? Arien Malec? Deven McGraw?

**Deven McGraw – Center for Democracy & Technology – Director**

Here.

**MacKenzie Robertson – Office of the National Coordinator**

Thanks, Deven. Stephanie Reel? Cris Ross?

**Cris Ross – Surescripts – Executive Vice President & General Manager, Clinical Interoperability**

Here.

**MacKenzie Robertson – Office of the National Coordinator**

Thanks, Cris. Steven Stack? Chris Tashjian?

**Christopher Tashjian, MD – River Falls Medical Clinics**

Here.

**MacKenzie Robertson – Office of the National Coordinator**

Thanks, Chris. Jon Teichrow? Amy Zimmerman? Are there any staff on the line?

**Claudia Williams – Office of the National Coordinator**

Claudia Williams.

**MacKenzie Robertson – Office of the National Coordinator**

Thanks, Claudia. Okay, Claudia, I'll turn it over to you.

**Claudia Williams – Office of the National Coordinator**

Thanks, MacKenzie. Just wanted to first say I am humbled, as always, by the work you guys do and doing it in such quick turnaround and with such good humor and good thought. Really, thank you so much for that.

And since no good and great deed goes unrecognized, you probably saw or you might have seen that the deadline for comments has been extended for the public to the 29<sup>th</sup> of June. Unfortunately, that won't give us a chance to have another Policy Committee meeting between now and that date—the next Policy Committee meeting is, I think, around July 10<sup>th</sup> or something like that. So, tomorrow will be the day when we present our detailed comments back for each of the questions. There's a chance that we will ask the Workgroup to go back and think about the really big picture question of whether the RFI adds up to creating the outcomes that we outlined, to reduce the cost of exchange, to increase the likelihood of the exchange, to increase public trust, and to avoid the need for business relationships bilaterally between everybody.

We'll make that determination probably—tomorrow is Policy Committee meeting where Micky will be presenting. Also just wanted to reiterate that since this is an RFI, ... a lot more chance for input. Our threshold has been to put forward—even where we can't reach consensus, to put forward the comments of various folks representing the spectrum of use.

I think, in general, we've done a terrific job, really, synthesizing comments that represent the full group but if in today's discussion there are key points that any one of you feel strongly about that we can add, as sort of additional work with comments, we're really happy to do that.

After today's call, I think Micky's going to really help us reach resolution on the issues we discuss today in the call itself, and then ... and I will wrap those up in quick edits and send off to Mary Jo Deering to be included in the master document that Micky will be presenting from tomorrow in the Policy Committee meeting.

So just wanted to give you guys a thanks and an overview on process. Any questions before I turn it over to Micky? No? Okay.

Well thanks, again, and we'll look forward to a good and brief discussion today. Thanks. Micky, to you.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Okay. Thanks, Claudia. So, today we're going to cover—you got sent to you a consolidated document that has all of the comments from all three of the Subgroups and you may recall that the Workgroup, as a whole, we had a call on Friday and a call yesterday, Monday, and we went through the comments on Friday from Subgroup 3 and then we went through the comments yesterday from Subgroup 2, and so the only comments that are in this rather lengthy document, 32-page document—the only new things that are here are the three questions from Subgroup 1.

What I would propose we do is focus on those at the beginning, so those are five, six, and fifty-six. We'll walk through where the Subgroup ended up on those, and would love to have the Workgroup consideration of those. Then, I would suggest really just opening it up rather than try to go through things that we've just recently—very recently, last couple days have already gone through without that much change, rather than try to go through all the secondary questions, because there's a lot of them. Just open it up for anyone to comment on any of the other questions, if you had a chance to review them or have any other thoughts on them. And then we can wrap up early.

I might try to do one other thing before we sign off, which is since Deven—I think I heard Deven's on the phone, right?

**Deven McGraw – Center for Democracy & Technology – Director**

Yes, you did.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Deven, if there are any areas that you think that we might not be fully aligned with the Privacy and Security Tiger Team, I can think of one—I might ask you to just sort of highlight those at the end, and maybe we can have a brief discussion about those because that will come up tomorrow anyway, so I'd love to get any Workgroup input on that.

**Deven McGraw – Center for Democracy & Technology – Director**

Yes, although I'm a little—I'm supposed to be speaking at three, so from a timing perspective that may not work as desired.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Oh, okay. When do you have to get off the call?

**Deven McGraw – Center for Democracy & Technology – Director**

Probably like ten minutes of—quarter of, maybe? Sorry about that.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Okay. No, that's okay. We should be able to get through these, I think, before then. Because there are only three, and then—I want to go through three and then I'll just turn right to you if have any thoughts on that.

**Deven McGraw – Center for Democracy & Technology – Director**

Okay.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Okay? Great.

**Deven McGraw – Center for Democracy & Technology – Director**

Thank you.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

If we first can turn to question five, so we'll just go through five, six, and fifty-six, which is what Subgroup 1 went through. And these were the high-level ones related to—I forget what the categories are, safeguarding, business, and these were with the governance?

**Deven McGraw – Center for Democracy & Technology – Director**

Yes. They were just general governance questions.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Yes. So question five is, "Would establishing a national validation process as described above effectively relieve any burden on the states to regulate local and regional health information exchange markets?" So you can read the responses, the summary comments from the Workgroup there.

In general, I would just paraphrase to say that where I think we ended up as a Subgroup was that for those states—that it certainly could relieve a burden on a certain category, or maybe a couple of categories of states, namely states who weren't going to do anything specific related to HIE on their own. It doesn't necessarily relieve a burden, but perhaps establishes a floor that would be helpful to them.

States that were going to do something on their own and whatever they were going to do is aligned with whatever the NVE requirements are, the CTEs related to governance or whatever particular issues they are focused on as a state, that could relieve the burden because then they wouldn't have to go through the process on their own.

But there was this recognition, I think at a Subgroup level, that there's going to be a subset of states, who knows how big, who are always going to have pretty state-specific issues, particularly probably in the privacy area, but perhaps some other areas, for whom this wouldn't really relieve a burden, be any kind of burden relief because they have either unique policy requirements or just regular sort of state desires to have certain types of regulation or policy that they want to be state-specific, and so this wouldn't relieve a burden on that set of states. That felt like that was about as far as we could go in making any general statements about that.

If anyone else from Subgroup 1 is on the call, please weigh in if you have any other thoughts on that to elaborate.

**Jonah Frohlich – Manatt, Phelps & Phillips, LLP**

Micky, it's Jonah. Wasn't necessarily ... of Group 1, but if I can just make a couple of very quick comments.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Sure

**Jonah Frohlich – Manatt, Phelps & Phillips, LLP**

I, first of all, agree just with the general statement. I think I would expect that states—first of all, states don't have any—I'll start with this. If the states do have a process in place or considering a process in place, I would expect that having a national validation process would certainly help, or could certainly be helpful with respect to things like security and business processes. But I would expect that, as you mentioned, that for other states—that for some states that have very peculiar privacy rules, that it likely would need to be supplemented by additional considerations within those states. I think that's just one thing to consider.

I think the second is that for some states that don't have anything in place, they may not be considering putting a validation process in place. I don't think it necessarily relieves the burden on them because they don't have a burden in the first place. They're not putting anything in place, it's more that ... in the states that a national process to validate entities, NVEs, would benefit them but not necessarily do anything to the state itself.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Right. Okay.

**Claudia Williams – Office of the National Coordinator**

Micky, I'm wondering—just thinking about that and looking at what we have, if it would be good to add a bullet that said something like, for those states that already have certification processes in place for health information exchange—which are few, right? The governance will also help with security and business practice conformance or something like that, but for those states with more stringent privacy requirements, like around sensitive data, there would continue to be a need to have state-level regulation or policy. I think it's taking this language but kind of making that distinction more clear.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Yes, I think it's more a functional dimension, which I think is a good one. I would just suggest softening what you just said just to say that it could—that the areas that we think would still be unique would be in the privacy area, but it could relieve some burden in business processes and security. There could be some who want to have very robust business process or security requirements—because then they wouldn't relieve the burden. We're just suggesting, that based on our experience and knowledge, we think that those are the areas that they would find some relief.

**Jonah Frohlich – Manatt, Phelps & Phillips, LLP**

I agree with that, too.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Okay, any other thoughts on that? We're all in agreement, just add that bullet with the general—what Jonah suggested. Okay?

The next question that we considered was question six: “How can we ensure alignment between the governance mechanism and existing state governance approaches?” I think where we came down on that was first off, that clarity in the CTE requirements would help. It's always hard to be aligned or to get alignment if things are ambiguous or unclear. That was really sort of the thrust of the first bullet.

I think the second bullet—the second two bullets were really just general statements that the government has lots of levers that it can pull to get alignment with federal policy, short of outright mandates or requirements. That's really what those two bullets are saying, is that there is lots of ways that the government—through incentives, through funding, through other kinds of policy levers, and this alluded to in the preamble of the RFI itself—could pull to get that kind of alignment. That's really all those three bullets say.

**Deven McGraw – Center for Democracy & Technology – Director**

I think that makes sense, Micky. It's Deven. It's well articulated.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Okay. Great, thanks. Any other thoughts?

**Jonah Frohlich – Manatt, Phelps & Phillips, LLP**

I agree. Jonah.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Okay. Man, we're blazing through these. Alright.

**Deven McGraw – Center for Democracy & Technology – Director**

It really helps to have Subgroups who've gone through all the tough stuff first.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Definitely. It does. It helps to have a couple of non-controversial, non-highly-technical questions, too.

Let's see. So now we're going down to—I thought it was question 56. Is it not? Oh yes, question 56 was a general one. This actually applies generally, so if anyone has any thoughts—the question is, “What CTEs would you revise or delete and why?” So it's almost a general consideration of all the CTEs. Are there any CTEs not listed here that we should also consider? So this wasn't really just something that Subgroup 1—I mean, arguably, any member of the Workgroup might have thoughts on this.

One that we did come up with was really an addition, which was to include some type of mechanism for addressing grievances among NVEs. And the expectation that there will always be misalignments, something will come up along the way, and wanting to ... and having some type of formalized process for getting resolution in an appeals process for the NVEs going forward.

**Peter DeVault – EPIC Systems Corporation**

Micky? This is Peter DeVault. I noticed up above—maybe it was in response to question one or maybe it was five—I'm not sure. We referenced that idea again, and there we called it a model for a grievance process, I believe. And here it says a model for appeals process. I think we should probably use the same wording; grievance process would be my vote.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Yes. I agree with that. I think that's a good touch.

**Jonah Frohlich – Manatt, Phelps & Phillips, LLP**

This is Jonah. We discussed this in the Governance Subgroup too, and similarly felt that some sort of a grievance process would be needed. I don't think we necessarily limited just between NVEs. It could be between an NVE and another accrediting body, or even between the accrediting bodies—I mean uber-body that accredits them. But that there might be a need to have a grievance that's not just about an NVE to NVE reconciliation.

**M**

Agreed.

**Claudia Williams – Office of the National Coordinator**

So we would take out among NVEs? I think that addresses that.

**Jonah Frohlich – Manatt, Phelps & Phillips, LLP**

The other thing that came up, and this was with respect to very large organizations, is there was concern about the HIPAA issue and if there is an enjoined HIPAA action that, especially for very large organizations, there was concern that even if those organizations had very robust business processes to address inappropriate access or use of data, and they enforced those, that they still would be prevented from accessing or using the sort of the HI services per this guidance, and that that could have serious, injurious consequences for some of the patients, and that was a concern.

**Deven McGraw – Center for Democracy & Technology – Director**

Isn't that condition limited to circumstances where you've been found to have committed not just an accusation, but that you have a significant violation, that you've been found and either fined or done a monetary settlement on? It's been a while since read through that CTE and I'm kind of surprised that that didn't end up in the Tiger Team's lap, but we actually did not talk about that all. Is that what you're referring to, Jonah?

**Jonah Frohlich – Manatt, Phelps & Phillips, LLP**

Yes, it was at CTE and it referenced—it was sort of a litany of issues. I'll pull it up right now. It listed an enjoined HIPAA action and I don't know if that is—I'm not a lawyer so I don't know if that—even though I work for a law firm, I don't know if that—

**Deven McGraw – Center for Democracy & Technology – Director**

I don't know what an enjoined HIPAA action is either and I am a lawyer, so there's no private right of action under HIPAA either. You're getting busted by the feds or you're getting busted by a state AG.

**Claudia Williams – Office of the National Coordinator**

I think the domain that was targeted was what Deven described as an entity that had been fined, because the problem is there's so often a long period between when an entity is put on notice and when an actual—we didn't want to create this endless period in which it was unclear. Maybe what we need to do is just go back and revisit that term enjoined action.

**Deven McGraw – Center for Democracy & Technology – Director**

Yes.

**Claudia Williams – Office of the National Coordinator**

Is there a better term to use?

**Deven McGraw – Center for Democracy & Technology – Director**

I don't know what they mean by it. If I understood what was meant, I could help you come up with a better term.

**M**

There probably is a better term but—

**Claudia Williams – Office of the National Coordinator**

I think it's where there's been an actual—whether it's been an actual finding.

**Deven McGraw – Center for Democracy & Technology – Director**

Yes, I mean to be honest the Policy Committee actually keyed up this recommendation very specifically to ONC way back in Stage 1 of Meaningful Use. So, there is very specific language that the committee had already agreed to. But it's with respect to whether or not you'd be eligible for a Meaningful Use payment versus subject to some sort of suspension from participation and when or from being able to use an NVE. I can't recall the posture of the requirement as proposed in the RFI.

**M**

And I think—didn't our Workgroup discuss this issue, like two years ago?

**Deven McGraw – Center for Democracy & Technology – Director**

Probably.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Yes, I think we did a long time ago as well.

**Claudia Williams – Office of the National Coordinator**

What if we did something like recommend using a language developed by the Policy Committee for those entities. Now, remind me, Deven—we did not include that in Meaningful Use, right?

**Deven McGraw – Center for Democracy & Technology – Director**

No. CMS rejected it both times.

**Claudia Williams – Office of the National Coordinator**

But we should take a look at that language that was proposed for Meaningful Use?

**Deven McGraw – Center for Democracy & Technology – Director**

Yes.

**Claudia Williams – Office of the National Coordinator**

Okay. I'm not sure this is the best place to put that but it might be a perfectly acceptable place.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

So what this is saying—could someone just restate concisely what it is that you're typing—someone is typing there—

**Claudia Williams – Office of the National Coordinator**

I think all that we would want to say is something like—we'll have to find whether there's an actual question that addresses this or not, but if not we can put it here under 56, and we would just say something like recommend use of the language proposed by the Health IT Policy Committee for entities that would be excluded from meaningful use or something like that.

But we'll check to see if there's an actual question. Jonah, do you know if there's—

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

As relating to what issue though? That's the part I—

**Claudia Williams – Office of the National Coordinator**

Relating to the issue of what entities would be excluded from participation due to a HIPAA violation.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Oh, okay.

**Deven McGraw – Center for Democracy & Technology – Director**

Right. And the important part was that you not sort of get suspended or banished—that's a great legal term, isn't it? —for just being accused or being under investigation. That it really has to proceed to the level of finality and it has to be significant, which means willful neglect of the rule or a criminal violation. So we weren't talking like your garden variety low-level offense. We were actually aiming pretty, seriously high.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Oh, okay. Is everyone comfortable with that?

**M**

Yes.

**Claudia Williams – Office of the National Coordinator**

I don't think there is a question specifically on that, so we can certainly put it here under 56. But Jonah, was there a particular place that your Workgroup put that comment?

**Jonah Frohlich – Manatt, Phelps & Phillips, LLP**

No. There wasn't.

**Claudia Williams – Office of the National Coordinator**

I think it's under eligible—I think it's in a section of the RFI that deals with eligibility.

**Deven McGraw – Center for Democracy & Technology – Director**

Yes. I remember reading it. I just don't remember a question on it.

**Jonah Frohlich – Manatt, Phelps & Phillips, LLP**

That's right. In fact, there wasn't for us but we just came back to it because for some people, in particular, it really raised a significant potential issue. I'm not going to say anything more than that on the call.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Noting that Jonah works for a law firm.

**Claudia Williams – Office of the National Coordinator**

I think we can put it under 15 which says, "Are there other eligibility criteria that we should also consider?" And just say with respect to the eligibility criteria already identified, we suggest the following revision. We could even try to dredge up that language or just—

**Deven McGraw – Center for Democracy & Technology – Director**

Yes. If you—

**Claudia Williams – Office of the National Coordinator**

... a letter.

**Deven McGraw – Center for Democracy & Technology – Director**

If you can't find it, Claudia, let me know because I might be able to retrace it back to a recommendation. I think it was pre-Tiger team Too, and then Micky you may be right - it may have come from the Information Exchange Workgroup.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Yes, I think it might have.

**Jonah Frohlich – Manatt, Phelps & Phillips, LLP**

Do you want to hear the language, what the CTE says? The eligibility criteria? This is in B. The eligibility criteria is that they have not had civil monetary penalties, criminal penalties, damages imposed or have been enjoined for HIPAA violation by HHS, the Department of Justice, or State Attorney Generals within two years prior of seeking validation.

**Deven McGraw – Center for Democracy & Technology – Director**

Okay. Alright, so in that context being enjoined, I assume, they're talking about they're under a legally enforceable order to cease and desist doing a certain behavior with health data. So it's a little bit higher level than a slap on the wrist, but it's essentially a legally enforceable agreement where the entity says I won't do this anymore. That's, I believe, how that would be interpreted. That goes farther than where the Policy Committee went when we focused more on whether you'd actually been fined either through a civil monetary penalty, a criminal penalty, or the agreement to a monetary settlement. Again, all for issues that involved significant violations of HIPAA—willful neglect or essential criminal liability.

**Claudia Williams – Office of the National Coordinator**

So Deven, do you still recommend using the Policy Committee language that was developed before?

**Deven McGraw – Center for Democracy & Technology – Director**

Yes, I do. I do. Only because you could be enjoined from doing something that is a HIPAA offense, but might not rise to the level that we would want to necessarily kick you out. I guess it would depend on what it was. The other argument for focusing on the seriousness of the violation versus any violation whatsoever is that's already had the blessing of the Policy Committee where all this ultimately has to flow through. I'll have to remind them, of course, that they said that but I know that we did.

**M**

And Claudia, this is on page 30-31, under eligibility criteria and we discussed in the context of question 13, 14, 15.

**Claudia Williams – Office of the National Coordinator**

Okay. So we'll put it under—probably under 15, just because that's the most generic.

**M**

Yes.

**Deven McGraw – Center for Democracy & Technology – Director**

Yes.

**Claudia Williams – Office of the National Coordinator**

Okay. And I think we'll just say something like to replace a language you have about—enjoined for HIPAA violation recommend using a language developed by the Policy Committee, and we'll either try to include it in the comments or if we don't have time we'll just make sure we dredge it up before the meeting tomorrow.

**Lawrence Garber – Reliant Medical Group**

Hey, Micky – this is Larry. There's one other thing that I thought might be missing from there SETs. One was—it's Condition S1, where they cite the different sections of HIPAA that the NVE should be ... to, and the one section that they're missing is 164.314 and I mean I'm not an expert on this but maybe Deven knows off the top of her head, but it looks like this is where they talk about some of the details of what should be in the business associate contract, and I don't know why that's left out. It's an organizational requirement.

**Deven McGraw – Center for Democracy & Technology – Director**

Were you looking in the Privacy Rule or the Security Rule?

**Lawrence Garber – Reliant Medical Group**

I'm looking at the Security Rules.

**Deven McGraw – Center for Democracy & Technology – Director**

Okay.

**Lawrence Garber – Reliant Medical Group**

Because they list 164.308, .310, .312, .316 – they skipped .314.

**Deven McGraw – Center for Democracy & Technology – Director**

So here is what I think has happened. I don't know the Security Rule ... by heart and I don't have my resource in front of me. HITECH makes business associates directly responsible for complying with certain provisions of the security rule, and it's those provisions that got picked up in S1 because those are the ones in HITECH that HITECH makes applicable to business associates of which NVEs will be those, and so then what S1 does is to take a step further and say for those security regulations that are already made applicable to you by HITECH, you don't have the option anymore to just address the implementation specifications. You have to implement them.

It flows from the natural devolution of authority to OCR to regulate business associates with respect to the security rule in a very direct way, and it's limited, I think, to those provisions that are expressly mentioned in HITECH. So it doesn't necessarily mean that we couldn't recommend that the provision of the security rule that was left out be made mandatory. Haven't had a chance to read it, so it would be hard for me to say whether that's a good idea or not a good idea in the context of this RFI. We can certainly ask to go further, but I think that's sort of probably where the language flowed from.

**Lawrence Garber – Reliant Medical Group**

The only confusing piece is that—so they do list .316, of which all the pieces are mandatory. In fact, that .314 - everything is mandatory as well, so maybe it is a moot point if that's all they're trying to do is to say that these are required as opposed to addressable.

**Deven McGraw – Center for Democracy & Technology – Director**

Yes, although that's interesting. I don't suppose it would hurt to note that we've noticed that this provision was left out, and it doesn't seem to make sense to us that it would be left out and others would be in.

**Claudia Williams – Office of the National Coordinator**

Larry, can you—we're just a little lost because the document doesn't include the CTE. Do you have a document that shows what question—

**Lawrence Garber – Reliant Medical Group**

It's Condition S1.

**Claudia Williams – Office of the National Coordinator**

Right, but what question comes after that? Do you have the document?

**Deven McGraw – Center for Democracy & Technology – Director**

I think he's on the one about additional CTEs.

**Lawrence Garber – Reliant Medical Group**

I was referring to the one—what additional CTEs, so this is sort of an edit to that, but it is question 22 and 23—22 is what should not be required—oh, it was under 23. It was question 23, “What other security frameworks or guidance should we consider?”

**Claudia Williams – Office of the National Coordinator**

Okay. Does somebody just want to maybe restate what we would put here?

**Deven McGraw – Center for Democracy & Technology – Director**

I think we would say that we noticed that 164.314 was not included in this list, and it doesn't necessarily make sense to us why it wouldn't be included, and we think ONC should look at that.

**Claudia Williams – Office of the National Coordinator**

Okay.

**Lawrence Garber – Reliant Medical Group**

Works for me. Thank you.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Yes. Great.

**Claudia Williams – Office of the National Coordinator**

And that's reference to the HIPAA Security Rule?

**Deven McGraw – Center for Democracy & Technology – Director**

Yes.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Now we know Larry did a thorough read.

**Deven McGraw – Center for Democracy & Technology – Director**

No kidding. Go Larry.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Even stumped the lawyer.

**Lawrence Garber – Reliant Medical Group**

I didn't get past Condition S1.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Doing some cramming before the call. Okay. So I think that covers the ones that we wanted to specifically cover today, and gets us through sort of the grab bag if anyone had any additional ones.

**Deven McGraw – Center for Democracy & Technology – Director**

Micky, do you want to tell me the one where you thought the IE Workgroup and the Tiger Team came up with different responses?

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Yes, I thought it was on the commercial uses.

**Deven McGraw – Center for Democracy & Technology – Director**

Oh, yes.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

In just from what I think I saw—Leslie Francis had an email and I think from what I can glean, the Tiger Team was headed toward supporting the prohibition of commercial uses.

**Deven McGraw – Center for Democracy & Technology – Director**

No.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

No?

**Deven McGraw – Center for Democracy & Technology – Director**

No.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

So I got that wrong. Sorry.

**Deven McGraw – Center for Democracy & Technology – Director**

We couldn't reach consensus on it. And so what we have done is to sort of report the main points made in the discussion, and several members of the Tiger Team were very much aligned with where the IE Workgroup has come out per the discussions of Subgroup #2.

But there were others who felt strongly that you couldn't really build trust in exchange without such a prohibition because entities would be concerned that data that might identify them on a provider basis, even if it was patient be identified, could be used to potentially disadvantage them in the marketplace. And then Leslie's point was that patients just don't like commercial uses, even of the identified data, and that having a prohibition like this does have trust-building aspects that might overcome the downsides.

I don't know that we could have reached consensus with a little more time to debate it, but what we agreed to do was report the lack of consensus and sort of the points raised on both sides.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Alright. Okay. And I think where we ended up for those ... toward part of that conversation is that it ought to be transparent and according to some fundamental principles that we—we laid out sort of core principles.

**Deven McGraw – Center for Democracy & Technology – Director**

Yes, and on the issues of transparency and focusing on prohibitions on re-identification, we did reach consensus on those pieces. It's just whether the value of creating a prohibition or not was the piece on which we could not get consensus.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Okay. Are there any other areas that you can think of that we may not be aligned?

**Deven McGraw – Center for Democracy & Technology – Director**

No. I actually think we are fairly well aligned.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Great.

**Deven McGraw – Center for Democracy & Technology – Director**

Now having said that, I didn't do my homework as carefully as Larry did in terms of making those comparisons but I—

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

And I wasn't able to make the Tiger Team call so I feel bad about that.

**Deven McGraw – Center for Democracy & Technology – Director**

Well there you go. We'll sort it out in the wash.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Okay. Great.

Well I think unless anyone has any other business that we need to think about with the Workgroup and in particular any other CTEs or questions or anything else on the governance RFI, I would propose that we adjourn the meeting.

**Claudia Williams – Office of the National Coordinator**

Can I actually ask you guys your opinion about something? So the concept that we're not—I don't think completely decided on yet is whether it would be useful to have the Workgroup take a step back in the month of June and ask, kind of, does this all add up to the outcome we want? Because each group was looking at such discreet questions that it was hard, I think, for any one group to think about the bigger picture and in some sense I'm not sure we could have done that without having gone through some of the details.

So that would mean using time this month on that kind of activity and potentially report back at the July Policy Committee meeting? Any thoughts or reactions about the value of that, and I know everyone's spent a lot of time so there's also just the burnout question.

**M**

I think that's a great idea, Claudia.

**Deven McGraw – Center for Democracy & Technology – Director**

I think it is, too.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Yes.

**Deven McGraw – Center for Democracy & Technology – Director**

I would agree. I mean as long as ONC is open to taking that feedback post-comment period, I think we'd be more than happy to give it.

**Claudia Williams – Office of the National Coordinator**

And I think given that's, sort of, our interpretation—similar to what we did before with getting the last round of comments, it would be considered reasonable within the timeline. Obviously, we have to reach consensus on that but that's good to know, so folks think that would be a useful activity. Okay.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Claudia, were you thinking that there would be a set of questions for us to respond to?

**Claudia Williams – Office of the National Coordinator**

Yes, there'll be like—I mean if we do it, there would just be one or two or three questions.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Yes, that'd be great. That's what I was going to suggest – but a couple questions to get us started would be very helpful.

**Claudia Williams – Office of the National Coordinator**

And my thought if we do this would be not to do this in teams, but do it as a full Workgroup and maybe just have a couple calls. I think we already have calls on the books that we could use.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Okay. I think that sounds great.

**Claudia Williams – Office of the National Coordinator**

Okay.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Okay. Well Larry, I want to thank everyone – all the Workgroup members for your help with this and also want to specifically thank Terry who's done just tremendous work at the Subgroup level as well as at the Workgroup level in taking a lot of very, very good but not always structured comments and actually turning them into coherent and structured comments. So I want to give special thanks there. So, thanks.

**Deven McGraw – Center for Democracy & Technology – Director**

Yes, bravo. Bravo. She's clearinghouse of the Information Exchange Workgroup.

**Cris Ross – Surescripts – Executive Vice President & General Manager, Clinical Interoperability**

Yes, this is Cris adding absolutely a plus one.

**W**

Plus one, there you go. Well for those who'll be at the Policy Committee, she'll be there in style tomorrow.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Great.

**W**

Thank you. This has been a—I mean I hate to say it, but a little bit fun in a warped kind of twisted way.

**Deven McGraw – Center for Democracy & Technology – Director**

Enjoyable group to deliberate with.

**Micky Tripathi – Massachusetts eHealth Collaborative – President & Chief Executive Officer**

Right. Great. Well thanks everyone.