

**HIT Policy Committee  
Privacy & Security Tiger Team  
Transcript  
May 20, 2013**

**Presentation**

**MacKenzie Robertson – Office of the National Coordinator – Federal Advisory Committee Act  
Program Lead**

Thank you. Good afternoon everybody. This is MacKenzie Robertson in the Office of the National Coordinator for Health IT. This is a meeting of the HIT Policy Committee's Privacy & Security Tiger Team. This is a public call and there is time for public comment built into the agenda. The call is also being recorded, so please make sure you identify yourself when speaking. I'll now go through the roll call. Deven McGraw?

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**  
Here.

**MacKenzie Robertson – Office of the National Coordinator – Federal Advisory Committee Act  
Program Lead**

Thanks Deven. Paul Eggerman?

**Paul Eggerman – Businessman/Software Entrepreneur**  
Here.

**MacKenzie Robertson – Office of the National Coordinator – Federal Advisory Committee Act  
Program Lead**

Thanks Paul. Dixie Baker, have you joined? Okay. Judy Faulkner?

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**  
Here.

**MacKenzie Robertson – Office of the National Coordinator – Federal Advisory Committee Act  
Program Lead**

Thanks Judy. Leslie Francis?

**Leslie Francis, JD, PhD – University of Utah College of Law**  
Here.

**MacKenzie Robertson – Office of the National Coordinator – Federal Advisory Committee Act  
Program Lead**

Thanks Leslie. Gayle Harrell? John Houston? David McCallie? Wes Rishel?

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**  
Here.

**MacKenzie Robertson – Office of the National Coordinator – Federal Advisory Committee Act  
Program Lead**

Thanks Wes. Micky Tripathi? And Kitt Winter? And any ONC staff members on the line, if you could identify yourself.

**Kathryn Marchesini, JD – Office of the National Coordinator**  
Kathryn Marchesini, ONC.

**MacKenzie Robertson – Office of the National Coordinator – Federal Advisory Committee Act  
Program Lead**

Thanks Kathryn. Okay with that, I'll turn the agenda back to you Deven.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Okay great. Thanks. I know we also have David Holtzman from the Office for Civil Rights on, as well as the support staff from MITRE. All right, great. Thanks MacKenzie. So, on our last Tiger Team call, we had discussed a thing to try on this call today, to hear from some ideally existing HIE models or existing vendors that facilitate HIE, health information exchange, that are deploying non-targeted query approaches. The query for a patients record in a circumstance where you don't know other providers that the patient has seen and you're beginning with a query for patient records that begins by using patient information, patient demographic information to find out where those records might be located.

We had initially sort of looked at whether there should be some policies to limit those queries and when we had first taken up this set of questions we didn't sort of see any additional policy needs in this space given that we were building on policies that we had already recommended for targeted query models. But the Policy Committee really thought that it wanted us to dive into this issue with some more depth. And we were – had originally planned to go ahead and do that on this call and then realized as we got together as co-chairs, Paul Egerman and me, and staff, that we wouldn't be able to put together a very complete set of respondents and wouldn't be able to have such a complete discussion on a 90 minute call. And that we might be better off to go ahead and do a more comprehensive, but still virtual sort of hearing on this issue that would enable us to spend a little bit more time on it and to hear from more folks than we might otherwise be able to hear from in one of our normal 90-minute calls. So we're really going to spend much of our time on our call today going through some existing – some draft plans for this virtual hearing and to get your feedback on it. And so it will whet your appetite for what's to come and give you a chance to weigh in on how we would put something like this together. But we're not going to get into the substance of those discussions on this call today.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Excuse me Deven, this is John Houston. I apologize I came in late. It took me four or five minutes to get through the telephone dial-in. So I don't know if other people maybe came in late as well.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Oh, thank you John. Did anyone –

**Gayle Harrell, MA – Florida State Legislator**

This is Gayle – and Gayle Harrell is on as well. It took me about 5 minutes to get in as well.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Oh dear. Okay, anybody else?

**Joy Pritts, JD – Office of the National Coordinator**

Joy Pritts is on.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Dixie Baker's on.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

David McCallie.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

All right.

**Kitt Winter – Social Security Administration – eHealth Exchange Coordinating Committee Chair**

And Kitt Winter.

**MacKenzie Robertson – Office of the National Coordinator – Federal Advisory Committee Act Program Lead**

Welcome everybody.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Kitt Winter, okay. All right. Well, we may have to change our 202 rule to a 205 rule from now on, but I'm glad you're all here. So hopefully the bulk of what I started with you heard, which is that we're not discussing non-targeted query today with some other stakeholders on the line. We are going to spend today planning for a future – near-future virtual hearing where we will hear from entities that have deployed non-targeted query models, and we're going to have a chance to discuss those plans and get your feedback on our call today. That will be the bulk of what we'll do today. We also hope to, since we'll probably get this hearing scheduled for some time in June or July, we also need to tee up some future topics for us to consider, and we want to get your feedback on those today.

Before we launch into all of this, I want to remind people where we left off on privacy and security recommendations for Meaningful Use Stage 3, where we were interested in sort of exploring whether there were other options beyond attestation for helping to ensure that the security risk assessment criterion that we want to remain as part of meaningful use, actually get done. And towards the end of our call last time I asked for some volunteers who would be willing to explore this further in a smaller group, and I didn't actually get anybody following up to affirmatively volunteer for that. And I don't think it's possible for us to explore an alternative model to attestation without having some more people deployed to this effort. Paul, I don't – do you want to chime in on this as well, or did I explain that.

**Paul Egerman – Businessman/Software Entrepreneur**

Well, let me – this is like two things. First the thing on the screen that says reminder and the attestation for security issue. Basically, if we got volunteers who will help us with that issue, which is a follow up to our last discussion, the way I look at it, that's great, because we really need an idea as to what we should be doing. If we don't have any volunteers, nobody wants to do it, then I assume that means for Stage 3 we just won't make a recommendation on this issue.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Paul and Deven, this is John Houston, I'll volunteer.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Okay. Thank you John.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

You're welcome.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

I'll, I'll – this is Dixie I'll work with John.

**Paul Egerman – Businessman/Software Entrepreneur**

Terrific, I was hoping you'd say that Dixie. Do we have anybody else?

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

I wanted to add one thing that I meant to send you guys an email about this. Last week I happened to meet with a company that provides services that does risk assessment for covered entities, that's what they do, that's their business. And they mentioned to me, just in the course of our conversation, that their business since the Meaningful Use requirement for risk analysis, that their business in that area has just quadrupled, that people definitely are doing more risk assessment as a direct result of the Meaningful Use attestation. So I thought that was interesting.

**Paul Egerman – Businessman/Software Entrepreneur**

That's helpful information especially since this was all part of a stimulus legislation. However, getting back to the topic, which I'm just looking to see if there are any other volunteers. I appreciate John Houston and Dixie Baker –

**Leslie Francis, JD, PhD – University of Utah College of Law**

This is Leslie I would volunteer.

**Paul Egerman – Businessman/Software Entrepreneur**

And Leslie, so we have three. Anybody else? Those three are terrific.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

The one thing I would ask is, can I, the reminders letter, can we have a – I just want to make sure we have a very clear statement of what that small group is going to do specifically.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

That's why I didn't volunteer, I'm not quite sure I really clearly understand it.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Okay.

**Paul Egerman – Businessman/Software Entrepreneur**

Well, the – I'm sorry, do you want to do this Deven?

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

You can do it Paul, go ahead.

**Paul Egerman – Businessman/Software Entrepreneur**

Well, in the first two stages of Meaningful Use we've tried to have this concept of shining a spotlight on something that is actually part of the HIPAA – something that organizations are supposed to do, but we wanted to like shine a spotlight to make sure that people were doing it in Meaningful Use. So again as Dixie said, that caused people to do more risk assessments, which is a good thing. And so the issue was, should we do that again for Stage 3 and if the answer is yes, what should we shine the spotlight on? And so we're not looking to make new policy or new laws or rules or anything, we're just trying to say, well is there something existing that would be beneficial to include in Meaningful Use Stage 3. And do people have any specific ideas after the presentation that we have heard at our last conference call.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

And I thought it was more towards, we have the spotlight already shined on security, risk assessments, but certainly the results of the audits, not the Meaningful Use audits, but the Security Rule audits that are being done by the Office for Civil Rights, suggest that these are still not really being done by providers on a wide scale basis. So is there anything, another way to make sure that the meaningful users are doing the security risk assessments that they're required to do under the Security Rule and that we've spotlighted as a Meaningful Use objective, beyond the mere attestation, which is what happens today. They check the box that they've done this, is there another way – I think that the question is, is there another way that we can use the Meaningful Use criteria as a tool for something beyond attestation for making sure that people are doing these risk assessments. That was the impression that I got from our last call.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

So I hear two different answers then. One answer is what else should we shine the spotlight on. And the other answer was, well, we're going to look at how to shine the spotlight brighter. Which is it?

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

So if it's the second answer, whatever the question is, how do we – what it's really saying is are people telling the truth when they're signing for attestation? Right, is that another way to word it?

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Well or is there another way to measure beyond attestation, as opposed to finding out if when the attested that it's true.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

But are we doing that measure because they may have been confused or because we don't think they're putting it down accurately?

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

The latter.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

Okay. So if, in fact, that's true, then it doesn't make any sense to find another thing to shine a spotlight on because we'll just have a second thing –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yeah.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

– whether it's true or not.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Can I suggest you –

**Paul Egerman – Businessman/Software Entrepreneur**

That makes – Judy this is Paul. That makes sense. The way Deven answered the question is the correct answer then.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Could I suggest though that even though it's the latter, there still may be some practical ways to lead an organization to do the right thing? And I think some of the reason why that attestation doesn't – isn't sufficient is because I think people were still trying to grasp, what do I need to do? So, I think there is some value in trying to provide further guidance on how you get to an effective risk assessment and effective compliance.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Well that's another piece – this is Dixie again. This is why I'm sorry I didn't preface this, but the reason why I brought the meeting up was that at our last meeting, David Holtzman also said that the audit was done pre-Meaningful Use. And he referred us to somebody at CMS named Elizabeth, who had some insights on how many or how people are doing, how many people actually are doing risk assessment. Do we have those data as well?

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Well, this is what we need a small group to explore.

**Paul Egerman – Businessman/Software Entrepreneur**

That's right.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Well I – as part of it if we –

**Paul Egerman – Businessman/Software Entrepreneur**

So what the small group will be doing will be looking at how effective this attestation process is –

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Yeah.

**Paul Egerman – Businessman/Software Entrepreneur**

– and seeing if there's any additions or alterations or suggestions that we have that might improve it.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

I think that's a good idea. I would also suggest that if it isn't being – people are attesting that it's done and it isn't, there might be some really good reasons why they're not. And I think we all worry that we make rules up that are they really the best ones, and the feedback from these folks about how to improve it, they may have us go in a different direction that is better.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

And you know, I'm somewhat cynical, but rather – without going into the discussion which we'll have in the small group, can I also suggest that to ensure that we stay focused and that we meet the objective, that either Deven or Paul participate so that they can keep us –

**Paul Egerman – Businessman/Software Entrepreneur**

I think that's reasonable. What we'll do is, between Deven and I, we will send to the people who volunteered, a summary, like a 2 or 3-sentence scope of what the focus is and then one of us will be, when we schedule the first scheduled meeting, one of us will be participating.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

That would be really helpful to make sure we stay focused on what we need to deliver.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yeah, no –

**Paul Egerman – Businessman/Software Entrepreneur**

Right, because if you put work into it, we want to make sure you bring back to the Tiger Team actionable – something that's reasonable and actionable and that sounds right. So is this all headed in a good direction Deven, are you okay with this?

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

No, I think, hopefully now it's clear to everyone what we're doing. I think it is heading in a very positive direction. This is an important issue and heading – diving into it in a very focused way I think will be incredibly helpful, so –

**Paul Egerman – Businessman/Software Entrepreneur**

Great.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Right.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

So I'd like to join the small group.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Small group, okay. Thanks Wes.

**Paul Egerman – Businessman/Software Entrepreneur**

Thank you Wes. Yeah, it's very interesting; it might have been easier now for me to say who doesn't want to be on this –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

That's right.

**Paul Egerman – Businessman/Software Entrepreneur**

I appreciate the participation, the discussion is good because it helps us focus on what we're trying to accomplish and providing clarity. So let's get back to the agenda that Deven put forward –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yup, thank you Paul.

**Paul Egerman – Businessman/Software Entrepreneur**

– which is, what we are trying to do in this call, the Policy Committee basically wanted us to get some real-world information experience and had some questions about what we had presented. And so what we want to present here is at least where things stand and a little bit about what our idea is for the hearing. So, what the next part is, this is not really a discussion of the content of non-targeted query response, it's really a discussion of what we think we want to do as a plan to address that issue with the hearing. Did I say that right Deven?

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yes, that's right.

**Paul Egerman – Businessman/Software Entrepreneur**

So why don't we go on to the next slide and go through that.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Okay. Great. This initial set of slides is just sort of really laying out the background that we just talked about, which is to remind people, including members of the public who have joined us on this call, what we mean by non-targeted queries. And keeping in mind that we – all of our query scenarios involve direct treatment and that the scenario 3 non-targeted query assumes that a patient's previous providers are not known and that the query involves an initial search to find locations of a patient's record. And it might involve use of what some on the Tiger Team have called an aggregator service, which might be a record locator service, might be in the PCAST model data element access service, might be a Master Patient Index or some form of health information exchange to find the possible sources of the record.

Initially with this scenario we talked about at a minimum patients having meaningful choice about whether they're going to be listed in some sort of aggregator service. Piggybacking on our recommendations on the targeted query scenarios, requiring the use of audit logs for queries, which would be provided to the patient upon request. And having an environment where providers can have – once a provider is, in fact queried – located and queried for a record, that they can have reasonable assurance to be able to respond to those queries. And those were all the recommendations for scenario 1 and 2 that are relevant here, once the provider in fact gets identified. But we're really talking about a situation where you first need to identify where those records might be located.

This slide talks about what we just talked about, which is the Policy Committee said do a little more work on this particular scenario. Explore the existing models out there and come back to us with what you learned and recommendations from that inquiry, because they were not fully satisfied that there were no more policy recommendations to make in this space. So that's really where we are, we're going to do a virtual hearing which will involve extending one of our existing calls, and this is how we plan to do it. Extending one of our existing calls by an hour or 90 additional minutes, in order to get more perspectives on this issue, focusing on entities ideally that are already doing this, if we can find them, so we can understand how it's working.

We're still in the process of working with ONC staff to find an appropriate date for this. It's obviously going to have to be sometime out in the future so that people can make appropriate plans in their schedule. We'll do the best we can to not delay on this matter, but to give people a sufficient amount of notice, so that they can make accommodations accordingly, since we're trying to use a call that should already be on your calendar, but is on your calendar for only 90 minutes. So, we'll use those sort of – at least how we've planned it is to use the customary format that we use for hearings which is that people can respond for 5 minutes – get 5 minutes but are available to listen for questions. We're actually going to try to get people to be very focused on a particular set of questions related to non-targeted query and whether there should be policy limits on those queries.

And so what we're really hoping to get your feedback on this call is both the proposed questions that we've come up with, as well as some potential presenters. And again, this is a public call, so none of these people have actually been contacted about their interest or availability and we're just seeking feedback. I suspect we might get affirmatively called by some of the people who are on this list, but we're hoping just to provide some additional – get some additional input from you as Tiger Team members and then during the public comment section of the call, hopefully we might get some other input as well. Does that make sense for folks?

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Yeah. Are we going to review the question or is that –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yes, that's next.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Okay. Good.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yup, yup. So – and these are from the slides that were distributed for you this morning, there are questions that Paul and worked with ONC staff and MITRE to come up with, but we definitely want to get your feedback on them. And again, we're sort of aiming at models either that are vendor – that we hear from vendors about or from HIEs about that are currently deploying non-targeted query capability. If it turns out that there aren't actually very many of those, we could hear from folks who are planning to do that, but haven't deployed it yet. So starting with the questions, what limits do you currently place on a provider's ability to perform queries, again, all in the context of non-targeted query? Example –

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

So Deven –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

– can a patient specify a list of providers that are allowed to access their records? How long have you been operational with your approach to limit access and how many patients are involved? What challenges or problems are created by limiting non-targeted queries? How does a patient express their desire for limitations? I'll just go ahead and go through all these and then we can talk about them in bulk. What changes or modifications are you planning, if any, for your process of limiting provider access? Are there emergencies or other circumstances in which the patient preferences are overridden and complete access is granted? If so, how does that process work and have there been any problems? Would having widely applicable policy that limits a provider's ability to perform queries be helpful, and if so, what would those limits be? And then – so there are two slides of sort of general questions.

Again, I notice now, as I'm looking through them that the questions are framed in terms of queries generally, but we really do want to focus on the non-targeted query capability where you don't know who the provider is or might be, who has the patient's record and you're doing an initial query to find the location of those records.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

So Deven, can I make a broad comment on the questions?

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Sure.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

This is David. I wonder if it would be better to rephrase this in terms of a more neutral and bi-direct – or double-sided assertion or question, which would be, what mechanisms do you use to ensure proper access to a patient's record? Because limiting access is only one part of it. In other words, you could have a very limited access and yet still it not be proper. So the question is what do you do to ensure that it's proper access? And it might involve certain kinds of limits; it might involve other kinds of checks and balances, etcetera. But I think focusing only on the notion of limiting access misleads, to really say that somehow we believe that's an inherent good, a limit –

**Paul Egerman – Businessman/Software Entrepreneur**

And David, this is Paul. That's – it's an interesting rephrasing, but that's really, my understanding is that's not what the Policy Committee is asking us to look at. There's – proper access could include – like security issues. I think there was a concern that meaningful choice isn't enough, that there needs to be something else that puts some limitations, when there's – and it's specifically when there's an aggregator service involved. So the aggregator service is like, as Deven described, a record locator service, some sort of an indexing capability that tells you where a record might be. Or the aggregator service actually could possibly have the data in it, right, the aggregator service could be like a centralized HIO where say give me the lab results and it happens to have them. So it doesn't have to – there's no record locator, it just gives you all the lab results –

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Right and I should be –

**Paul Egerman – Businessman/Software Entrepreneur**

– and so that sort of – so the question is whether there are any limitations that are put on that, besides a physician or a provider that's authorized to get it, can they get all of the data, whenever they want? Is there some limitation that's put on it, can only certain authorized provider's do it, only under certain circumstances. That's really the question we're answering.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

This is David again. I certainly was not intending to bring the security questions to the table; I think those have been addressed in other forum. And so maybe proper access is not quite the right wording either, but there's an inherent assumption that if you limit the number of people that – the number of records that you can access, that that is somehow addressing a problem, and I think that's a red herring. I think you need mechanisms to ensure that the right people are being accessed, when the record is needed. And that's a broader question and more appropriate, it would seem, because –

**Paul Egerman – Businessman/Software Entrepreneur**

Well, and that's an – actually, that's a good response, but hopefully that in the hearing might come up with that information, in other words –

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

If I –

**Paul Egerman – Businessman/Software Entrepreneur**

– bringing forward the idea that that's not the real issue, you shouldn't necessarily be limiting it, you should be thinking, well –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Well, if we're sending out signals that you have to be focused and you have to respond to our questions, we're not exactly inviting people to say your questions are wrong.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Right. No, that's very true. I mean I actually think we can get at this – get at both points, which is to sort of again frame this as an effort to uncover what sort of policies did they deploy to ensure that a non-targeted query search for a patient record is appropriate. And this would include any specific limitations on who can do query or the purposes for which query can be done, or even limits on the query itself. But we want to hear how they thought through this issue of non-targeted query and what policies did they set up with respect to how it would be deployed, that would be designed to ensure that such access was proper or legal and authorized, whether by – or by the patient.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Yeah, I like that – I think that's a better formulation.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yeah, it puts this concept of limitations within the frame of assuring proper access from a policy standpoint.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

I think it's really important that you capture that Deven, because –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yeah.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

We launched right into the questions and I was kind of going, what are we – what kind of query are we talking about, are we talking about, do you have the records of Dixie Baker, are we talking about a direct query to the database. And the points that you just articulated I think we need to capture.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Okay.

**Paul Egerman – Businessman/Software Entrepreneur**

So that's very helpful –

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

This is Judy –

**Paul Egerman – Businessman/Software Entrepreneur**

– because that's the way to respond to David's comment also. These are the overarching issues that we're trying to understand –

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

The other one is I'd like to know – I'd like to know what a non-targeted query really is. It's different than an aggregator service, because you can have an aggregator service over the whole country, you can have an aggregator service over a region, or you don't need an aggregator service, it's not an essential thing. A targeted query – is a targeted query, if I had a patient tell someone I went to St. Elsewhere or is a targeted query well, or I went to the Alphabet Soup Clinic in Biloxi or is a targeted query I went to a Clinic in Biloxi, I don't quite know what its name was, because I think very often people don't really remember the names of their clinics. So what becomes a targeted query then?

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

And there's many other kinds where you can just say, I know this patient is in the ACO, but I don't know where they got their care in the ACO, is that sufficiently targeted? That's a broadcast to the ACO, perhaps.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

I think we need to stick to the initial definition that we came up with, especially since we have verbalized our recommendations on our concept of targeted query, which is asking a specific provider for a record, right. Here, in a non-targeted query, it's almost like it's a – I've described this, as I've been talking about it with folks, rightly or wrongly in my description, as kind of a first order query. Right, you don't know who the – where the patient has been seen, and maybe the most common use case for this is an emergency one. You don't know where the patient has been seen and you're going to look for locations for the patient record using patient demographics.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Well I –

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

And what if – what if you have –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

I would just, I would really like to take exception to one thing you said Deven –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Okay.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

– which is to imply that this is primarily an emergency use case.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Right. Okay.

**Paul Eggerman – Businessman/Software Entrepreneur**

That is a good point.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

I think the point that Judy raised, that there's really a gradation of degree of targeting and that at one extreme end, it's ask every provider in the United States about Wes Rishel. At the other end it's only, ask if Wes Rishel can remember exactly the name of that doctor in Biloxi that treated him 2 years ago, or the Clinic that he worked in, even better. And I think we have to look at that sort of a graded series of degrees of targeting.

**Paul Eggerman – Businessman/Software Entrepreneur**

Well, I agree Wes, but I actually think that the – we had these like 3 scenarios for how the query-response process would work. And in scenario 3, which is the one that we're focusing on, is when there is an aggregator service involved. So these other issues that Judy mentions, where yeah, you have the gradation, where in one case the patient says, I'm a patient at Harvard Vanguard. So the EHR system contacts the Harvard Vanguard system, two EHR systems talk to each other based on patient information. That's not scenario 3. We also could have a situation where you think the patient is presenting from Pittsburgh and you say, well, there's a good chance that means it's UPMC and so you ask the UPMC system directly. That's also not scenario 3. Scenario 3 is you go through some aggregator service, some service that says these are all the locations where the patient's record is or here's the actual data or here's where some or more of the data elements are, and the real question is, are there policy issues around that scenario about –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Well, I don't see how the implementation changes the question. The issue is, is there no difference between saying, I want to know where Wes Rishel is treated anywhere in the country or I want to know where Wes Rishel is treated, I don't know exactly where it was, so I need an aggregator service. But I know it was in this region or in this time frame or some other specific scope-limiting stipulation.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

I don't know Wes, but I think that's part of the question that we want to surface with people.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

That's my point is –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Ah.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

– that we have to develop the questions in a way that it's not black and white, that gives them a chance to address the shades of gray around scope limitation. By the way, I also think we should ask them if there is an inherent scope-limitation in the service they currently offer. So, if they're a city-based –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Right.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

– HIE, then probably the greater metropolitan area is their scope limitation –

**Paul Eggerman – Businessman/Software Entrepreneur**

That's an excellent addition – some inherent –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

If they're associated with some type of health service –

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

But there needs to be a reason for the scope limitation that's not being articulated by just counts. Are you trying to prevent fraud? Are you trying to prevent identity theft? Are you trying to prevent accidental misidentification of the wrong patient?

**Paul Egerman – Businessman/Software Entrepreneur**

(Indiscernible)

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

That should be part of the questions then.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Yeah.

**Paul Egerman – Businessman/Software Entrepreneur**

That's a good point; I assumed the reason for the limitation would be privacy for the patients so that the patient's –

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

So is that a mismatch problem?

**Paul Egerman – Businessman/Software Entrepreneur**

– describe some privacy preferences about who may access their information through an aggregator service.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Then that's a consent question, consent and authorization, which is very different from fraud, which is different from statistical mismatch, false positive/false negative rates – I mean –

**Paul Egerman – Businessman/Software Entrepreneur**

Yeah, we're not looking at statistical mismatch and false positive/false negative. And we're not looking at fraud.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

And I think the other thing we're looking at is reasonableness. So if the patient is from Pittsburgh, you could specifically query the 6 different organizations that are from Pittsburgh, is that targeted or is that non-targeted if you're specifically querying those 6, because the patient just says I went to some place in Pittsburgh, I don't know what it was.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

That would be targeted Judy, by our definition.

**Paul Egerman – Businessman/Software Entrepreneur**

That would be targeted. And as we said in our previous –

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

So what if they –

**Paul Egerman – Businessman/Software Entrepreneur**

– what we said in our previous discussions is that would be a reasonable thing to do. If you know –

(Multiple speakers speaking over one another)

**Paul Egerman – Businessman/Software Entrepreneur**

– the area has 4 major institutions you could ask all 4.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Now I'm confused –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

So then, we need to –

**Paul Egerman – Businessman/Software Entrepreneur**

The 4 institutions have their own policies how they respond.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

So that's –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

So are we saying that it's a reasonable expectation that someone in Florida should know who the 4 organizations are in Pittsburgh to query?

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Well, no.

**Paul Egerman – Businessman/Software Entrepreneur**

No, no, we're just saying if there is an aggregator service that is being used, these are the questions we're going to ask.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

You just said that was a tar – the Pittsburgh example was a targeted query, did you mean non-targeted –

**Paul Egerman – Businessman/Software Entrepreneur**

Yeah, and we're looking at non-targeted queries for this one.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

So the Pittsburgh –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Yeah, but Deven said that the Pittsburgh example was a targeted query, presumably because somebody knew who the 4 –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

By reaching out to specific providers –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Yeah, but I'm not – I don't want to reach out to specific providers and I'd like to pick up the few patients that don't go to UPMC. I mean –

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

Well yeah, but by the specific providers, you're meaning you know the providers in the Pittsburgh area, so you know them by name, and you're targeting those –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Right and that seems like a – it seems to me that there is a degree of targetedness –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Right.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

– that is based on the way constraints are placed on the aggregation process or the access to the aggregation data. And we need to identify whether these people have found the need to create policies and technology that represent that degree more than all or none, and if so, ask them why. And we also need to know what inherent limitations they have anyways.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Right.

**Paul Egerman – Businessman/Software Entrepreneur**

Yeah, it's what you said at the end, it's sort of like where we're headed.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

That sounds to me more like a consent and authorization question.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

No, not – well, that’s definitely part of it David, in part because we have already established that in a circumstance where you’re searching for a location of a patient record, and using an aggregator service, that patients should, at a minimum, have some meaningful choice about whether they’re going to be listed in a service that would assist in finding their records, in circumstances where otherwise you don’t know where to look.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Yeah but that –

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

But I don’t think you can draw a clean distinction between targeted and non-targeted other than in the very narrow case that targeted is you know every parameter up front to go directly to a gateway –

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

And I agree with that. This is John Houston –

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

– very rare circumstance.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

– I mean, I hate to say, using the Western Pennsylvania experience because I’m there, we have what I would consider to be an aggregator, that’s a HIE, and so – and we have a very unique way of matching patients and making sure that access is appropriate. And so I think it does sort of mix targeted and non-targeted, so I’m afraid that using those terms may create an artificial barrier to answering this question.

**Paul Egerman – Businessman/Software Entrepreneur**

And to me though, the distinction is whether or not there’s an aggregator service. I mean the example I give, tried to use like an old fashioned example is, if you are cloning somebody, if you know the phone number, you just phone them. If, however, you don’t know what the phone number is, you have to look it up, in the old days there was a thing called a phone book, but you had a decision as to whether or not your listed in the phone book. And so you’ve got these concepts of these aggregator services that are like directory services for patients –

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

But Paul, even the targeted query is going to involve a lookup of some kind, even the smallest –

**Paul Egerman – Businessman/Software Entrepreneur**

Not necessarily through an aggregator service.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Well it would, the aggregator service is called the MPI of the institution that you connect to.

**Paul Egerman – Businessman/Software Entrepreneur**

That’s not an aggregator service, I’m sorry. The aggregator –

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

I don’t know, I think I agree with David though. I think that a lot of cases when there is a third-party service out there, like a HIE, that can provide that function, that frankly the provider in the area will use that service, regardless, because that is the service that gets used for the MPI lookup. And that what I think the challenge is is once you extend outside of that particular region, what you need to do is have a rollup strategy, which allows you to find records outside of a particular region. But, it’s – this is as much an architectural discussion as anything, I think.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Right. And it seems to me that it really boils down to appropriate access, where appropriate takes into account the likelihood of a mismatch - accidental, the presence or absence of consent and proper authorization and then, of course, the technical safeguards to prevent spoofing and all that, which we agree are not on the table. But the notion of an aggregator service alone, I don't think that's sufficient, because I think every service has some degree of aggregation going on, that's what indexes are for.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

I'm going to disagree with David here. I feel there's an essential difference between I go to let's say UPMC, and they keep my records, and I know they know who I am, because when they walk in, they find me versus there's a service that keeps track of everywhere I ever went. I think that feels inherently different.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Well Judy, I think there are –

**Paul Egerman – Businessman/Software Entrepreneur**

Yes Judy. And let me –

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

And one – one more thing, just – let me just finish for a second Paul. One more thing is that it's stored differently. One is stored by there I am, one is stored by the organization and the other is stored by the patient, so I look up the patient, I can find all the organizations versus I look up the organization and I can find the patients who go there. There is a fundamental, technical difference between them.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

But –

**Paul Egerman – Businessman/Software Entrepreneur**

And that fundamental technical difference Judy is something that we actually have talked about before. Because when we talked about meaningful choice, we made the – we talked a little about from a standpoint of the patient provider relationship, whether or not the provider retains control of the information. And the basic concept was, well, the provider can establish their own policies for when they can release information from the EHR system, well then they have control. But as soon as they give control to somebody else, outside that organization, by listing it in an aggregator service, by putting information out there where somebody else can make the decision and it's no longer like the providers, we said that involved meaningful choice. And so that's the scenario that we're looking for and that's why we're talking about in these targeted and non-targeted queries.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

I think that's an excellent comment Paul.

**Leslie Francis, JD, PhD – University of Utah College of Law**

This is Leslie. I agree and it suggests to me that a prior question that maybe isn't on the list is what kinds of lookup capabilities do you have when you don't know who the patient has seen, but want to find records.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

But that would apply –

**Paul Egerman – Businessman/Software Entrepreneur**

That's an interesting statement.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

This is David. I think that applies within a large IDN, as well as across a region or even across the country.

**Leslie Francis, JD, PhD – University of Utah College of Law**

Right.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

If you query UPMC for my records, there's what, 16 hospitals part of the UPMC system?

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Twenty.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Some of them whom use different vendors, some of whom, I mean, it's a complicated scenario –

**Paul Egerman – Businessman/Software Entrepreneur**

I understand David, but it's like we've through this before, went through the whole discussion of what this wonderful thing called an OHCA is –

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Right.

**Paul Egerman – Businessman/Software Entrepreneur**

– and UPMC is probably an OHCA and it's been allowed to operate –

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

But my point is it goes through an aggregator internally –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yeah, but we're trying, David, to focus on exchange between disparate organizations, as we always do, and not dealing with internal policies of being able to find records within an IDN.

**Paul Egerman – Businessman/Software Entrepreneur**

Yes.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

I'm just saying Deven that your definition of an aggregator as a definitive distinction isn't adequate.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

I hear you. I hear you. I'm actually wondering whether Judy's framing of this, which is that you're looking for a record based on patient data rather than looking for a record based on where you're approaching the providers for them to sort of do the internal work – sort of consistent with Paul's articulation using our previous consent recommendations about sort of who has control over decisions about when records get released. Are you talking about a query that comes to an organization where they make the decisions that they need to make based on their legal and ethical responsibilities about whether to release data or is there an initial query where you're looking for the record based on patient data. And what's going to be returned may vary, but is it at a minimum potentially the locations of those records, which it self-conveys some PHI, even if it's not detailed information about a person's health data.

**Paul Egerman – Businessman/Software Entrepreneur**

Right. And –

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Can – something?

**Paul Egerman – Businessman/Software Entrepreneur**

It might be helpful for us to revisit – discussion, and there's a little bit of confusion about the scenario. So it might be helpful at some point to revisit our meaningful choice recommendations, when we talked about providers having control over release of information. And then we sort of – I remember we also sort of fought a little bit about terminology though, where there's – we ought to call it something like intermediary where there's basically a third organization between the query organization and the response that has a big impact on what information is give out and what that information is.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Could I say something? This is Dixie. I think given how quickly models are changing and new models are emerging, I would like to see us ask exactly what Leslie suggested is, how you go, and Leslie you can correct me if I misquote, but how you go about finding a record when you don't know exactly where – all you know is the person's name.

**Leslie Francis, JD, PhD – University of Utah College of Law**

And the one thing I would add to that, given what John said, and the discussion with David is, outside of your organization.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Right, outside, exactly. Right. Yeah. I think that open-endedness is needed because we can't possibly foresee all of the models and services that are out there.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Can I suggested too that a lot of these types of services they don't care whether you know where the record is or not, the request goes out in the same way and I want to make sure we don't limit this discussion. Again, our HIE you make a request of records and it will confirm where the recor – if there are records in existence or not. And so, I want to make sure we don't also narrow this conversation too much based upon architecture we think exists.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Right, because there are, as Dixie pointed out, many existing architectures that start with patient and end up returning data that comes from multiple sources, that's pretty common in the world today. And there are new ones emerging all the time. No particular architecture is going to describe it. But if that's the definition that a non-targeted query starts with the patient and could conceivably return data from more than one –

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Um hmm.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

– originating source, maybe that's a broad enough rubric to –

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Yah.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yeah, and –

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

I –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

And then also it occurs to me that we would want to know what is the – what does get returned in response to that query, is it – record, is it actual record, how much information.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

But Deven, that, I mean that changes. Obviously, there are use cases out there that go straight to the data; there are use cases that would return with request for consent assertions, etcetera. I mean, I think it's all over the map.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

And I think we need to be mindful of that, and I hate to enter this into it, because it probably should drop off, but I'm going to say it anyway is, we still have to deal with sensitive information types. And is that going to, depending on the locality, change how information is shared and how it's limited and when consents kick in and when they don't, things like that.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Well, I think that that needs to be – I think as long as we frame it a little bit more broadly in terms of sort of asking people for example, again what types of information gets returned? Do you make any differentiation based on sensitive data types? If you provide patients with meaningful choice, how granular is that choice. How does that get deployed at the operational level?

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

And we might want to even make it – I agree with those questions, we might want to have a very first, overarching question which is that does your – do you address exchange of sensitive information? Even before you ask those questions, because a lot of this – well, a lot of what happens is it's just avoided.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Yeah, I think they put that in their answer as we just don't do it, that would be –

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Right. But I think we want to ask that question, just to make sure that it does get this part of the exchange.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Yeah, it's just a rabbit hole that gets deep as you start down –

**Paul Egerman – Businessman/Software Entrepreneur**

Well yeah, that's right. Because then the next question is, what's sensitive data?

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Yeah and –

**Paul Egerman – Businessman/Software Entrepreneur**

So we just get deeper and deeper into this thing as we try to figure that out.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

I can tell you this comes up –

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

You need two sessions –

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

This comes up constantly.

**Paul Egerman – Businessman/Software Entrepreneur**

Isn't all the data sensitive?

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Can we let John speak please?

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

This comes up constantly and I hate to say this, but this is the issue nobody wants to confront that is becoming more and more of an acute issue. So at some point this has to be tackled.

**Gayle Harrell, MA – Florida State Legislator**

I think – this is Gayle. I think that's one of the most important questions we need to ask.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Yeah, if we want to – yeah, but it's so painful –

**Gayle Harrell, MA – Florida State Legislator**

We really need to solve the problem.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Nobody's handling it; it has to at some point get on the radar screen for people because everybody's asking about it.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Well, and at a minimum, I mean that's the reason for sort of bringing some folks to the table and asking them a series of both targeted, but also open-ended questions to get them to focus on this set of issues. Tell us what they're doing, what they're not doing, why if they made choices not to do something, why they did so, like this is an information-gathering hearing. All right, with that, I think I'd like to – I mean, clearly we're going to have to send out another formulation of the questions based on this incredibly helpful feedback. Because I –

**Paul Egerman – Businessman/Software Entrepreneur**

It is very useful.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yeah, I suspect that you guys are maybe even going to want to chew on another iteration of this. We may have another call where we could spend some time getting feedback in a community way, like we do on these calls, or we may, depending on when we get this hearing scheduled and how quickly we need to get draft questions out to potential testifiers, we may end up having to do it by email. But you will see iteration, for sure, for you to provide feedback on in some way, shape or form, based on the dialog that we've had today. I think it's going to take us more than one crack at this to get it right. But this has been really, really helpful.

But I'm also mindful of the time and thinking that we might want to move to the question of who we might ask to come to the table. And again, this is a list that was prepared with some assistance from ONC staff and from our support from MITRE, as well as some of my own and some of Paul's experiences. But we offer it as straw proposals for you to react to. Again, we're trying to focus on entities that are – these types of sort of queries by patient information already. If it turns out that there are too few of those, we certainly can talk to entities that are preparing to deploy such models, but we'd really like to get some – the sort of practical experience that might be out there. And so the list that's on the slide –

**Gayle Harrell, MA – Florida State Legislator**

For those of us who are not on the computer, could you read off that list?

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Oh sure Gayle. The Indiana Network for Patient Care, the Colorado Regional Health Information Organization, Maine HealthInfoNet, RIQI which is the Rhode Island HIO, Nebraska's HIO, Utah's, the Rochester RHIO in New York and then Healthway, which is actually came from NwHIN exchange and it crosses state borders.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

So this is David. You don't have probably the largest aggregator in terms of numbers of patients, which is Surescripts, and I think that is a model that's not exactly the same but it is very similar in that they do explode and join queries in the background.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Can I ask a question? Is this, you list them as being state HIEs, I – my HIE that I'm actually do a lot of work for, which is ClinicalConnect in Western Pennsylvania, I think has a great model. It's not a state HIE, it is a regional HIE. Is there a reason why regional HIEs aren't on this list?

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

There is one, that would be Rochester, but we weren't trying to you know, prefer New York over Pittsburgh John, so –

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

I would be more than happy to participate or having somebody participate from ClinicalConnect, because I think we have a really neat model, which has some – a lot merits to it, in terms of how it works.

**Paul Egerman – Businessman/Software Entrepreneur**

And this is Paul, and that's sort of like exactly the feedback we're looking for. In other words, this list that we put up here is sort of like, we're not going to have to listen to testimony from all of these, because what we try to do is like try to find like 4 or 5 that are like, we think do interesting things and are representative of the different things that we want to hear from. And so the question is are there any groups that are not on this list. We'll turn to your comment about Surescripts in a minute. Let's stick to the state and/or regional HIE organizations.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

I know a couple of others Paul. This is Dixie. One is HealthBridge in the Cincinnati area and the other is Inland Northwest Health System.

**Paul Egerman – Businessman/Software Entrepreneur**

Do you know if any of these are doing any of these –

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Yeah –

**Paul Egerman – Businessman/Software Entrepreneur**

Sort of access limitation things?

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

I'm sure of HealthBridge, I think Inland, and I'm pretty sure Inland does as well. And both of those are very mature HIE organizations.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

I know that HealthBridge is very mature. I mean again, we were relying on our – this will be the difficulty of sort of, because we can't hear from everyone who's doing it, so it's helpful to sort of have a list that's more complete, but at the end of the day, we'll try to narrow this down.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

There's a good one in Oklahoma, SMRTNET, that covers a substantial portion of the whole state, with lots of – many different systems are feeders into it, and I'd be happy to get somebody from that or ask –

**Gayle Harrell, MA – Florida State Legislator**

Is Healthway the only one we have that's doing multistate? I think we need to be able to see what you do multistate, especially on sensitive data and different state laws.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

I believe it may be, Gayle. This may be an –

**Paul Egerman – Businessman/Software Entrepreneur**

So Gayle, your feedback is to make sure we include at least one that's multistate.

**Gayle Harrell, MA – Florida State Legislator**

Exactly.

**Paul Egerman – Businessman/Software Entrepreneur**

Similar to what John Houston's saying, something that's regional perhaps, and there are a few examples and I can see how the multistate thing does add an interesting level of complexity.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

I think you'll find that HealthBridge includes Kentucky.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Yeah, both of them that I mentioned are multistate, INHS and HealthBridge.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Okay. Helpful.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Does the VA have –

**Paul Egerman – Businessman/Software Entrepreneur**

And if there's anybody on this list you think we shouldn't listen to, you should send us an email.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

The VA is an OHCA John.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Okay, I wasn't sure whether the VA had their own issues that might – they may have some solutions for, but –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

They exchange also as part of, or at least some of the VA facilities I believe are part of Healthway.

**Kitt Winter – eHealth Exchange Coordinating Committee Chair – Social Security Administration**

This is Kitt. That's correct.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Thank you Kitt.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

So does it make sense to have the VA talk about how they're solving this issue or is it a different issue?

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

So I think it's different John, because I think we need to get some sort of more of the private sector models that have made this work versus a controlled system like the VA.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Thanks.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

All right. Now we want to hear from some vendors, too, who again, facilitate the query of patient records based on patient data. These were just some ideas that were thrown out there; we're certainly willing to hear from others. It's another area where at the end of the day we're going to have to narrow the list, but we certainly want to start from the universe of who we think is out there actively providing service – those services in this space.

**Gayle Harrell, MA – Florida State Legislator**

Once again, for those of us who are not on the Internet, would you read out the list?

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Sorry you had to ask that again. So it says, Medicity, Axolotl which is – that was their original company name, they've been bought by Optum, Intersystems, ICA, Covisint, Orion and RelayHealth.

**Kitt Winter – eHealth Exchange Coordinating Committee Chair – Social Security Administration**

This is Kitt; I would also suggest adding EPIC.

**Paul Egerman – Businessman/Software Entrepreneur**

Well EPIC, Judy's on the call, but I'm not sure EPIC does infrast – I mean do you have a customer – HIE organizations?

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

Yeah, no, we're not. We don't fit into the same stuff; we wouldn't compete with them for any of this business.

**Kitt Winter – eHealth Exchange Coordinating Committee Chair – Social Security Administration**

I'm sorry.

**Paul Egerman – Businessman/Software Entrepreneur**

I mean EPIC is, I believe –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

EHR vendors don't compete for the same business, but they certainly do solve the problem that we have here –

**Kitt Winter – eHealth Exchange Coordinating Committee Chair – Social Security Administration**

Yeah, that's why I was thinking of them, I wasn't thinking of just infrastructure.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

We do, but in a – we don't fit the previous screen and we don't fit this screen. If you wanted to create another screen of EPIC and others like EPIC, sure, but we'd be the odd duck in these two screens.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

I think we were really trying to focus on the vendors who are facilitating the query of patient records based on patient information.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Deven, you could add –

**Paul Egerman – Businessman/Software Entrepreneur**

– through some aggregator service.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Deven, you could add Cerner to the list, we do that.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Cerner, Siemens –

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Well, there's also a company DD Motion that we use for our aggregation and for our HIE, which does that.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

DD Motion would fit in with that other list of vendors.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

They're owned by Allscripts now I think.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Yeah, they were acquired, yeah.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Yeah. They fit –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

So Medicity is owned by one of the big payers and Axolotl is owned by another big payer. I mean, it's not –

**Paul Egerman – Businessman/Software Entrepreneur**

And RelayHealth is owned by –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

– there aren't very many stand-alone vendors anymore.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

McKesson.

**Paul Egerman – Businessman/Software Entrepreneur**

Yeah, RelayHealth's owned by McKesson. And so, but the issue is, that there's a difference between this kind of vendor and an EHR vendor

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

DD Motion's not a –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

I agree and I think what we have discovered over the last year is that a lot of the actual, on the ground services are coming from EHR vendors. That's why I think it's important to include them.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

That's true, but then you have to decide what the purpose of your meeting is.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Right.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

So, just –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

I don't understand how including EHR vendors cast any doubt on the purpose of the meeting.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Yeah, to the degree that that vendor has aggregation services that fit Paul's definition, which many of the EHR vendors do have.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Does Athenahealth fit into this group?

**Paul Egerman – Businessman/Software Entrepreneur**

No.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Not particularly.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

Which vendors do David?

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Well, we do. We do Judy. I mean, we run several HIEs, we run the SMRTNET for Oklahoma, we run one here for St. Joe's Northwest most corner of Missouri and it's an aggregating HIE. I mean, it's not a core part of our business, obviously, but it's a real part, because we've got real clients we support.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

Well, we don't do that, but if in fact –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Oh, okay.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

– if in fact it would help, for –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

So none of the inter-client capabilities that you offer have any aggregation service at all?

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

No, we don't do any aggregation service.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Okay, then I was –

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

We are targeted and then we're believing we should extend that target because a patient doesn't always know the name of his or her health organization. They know where they live, to a small locale around where they live, so we can get that as well. But we are not going out to any large area.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Yeah. So –

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

But we'd be happy to be there if you think we should.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

No, it sounds like you've clarified what's going on and it's not – you're not on to non-targeted query.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

Well, the only reason it might be worthwhile is if everybody thinks this is the way the world is going and doesn't realize there are other ways, you might want a variety of ways so that you have a broader sense of what's possible. So that when decisions are made, they're made with the bigger picture.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Yeah. That's a good point.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Well I mean, I think

(Indiscernible)

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Some of those other ones will cover a lot of that, I think, the targeted by region.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yeah. I mean I think that – it's absolutely true and we're not, I don't think we're coming at this set of questions as a way to sort of create sort of one-size-fits all or two-size-fits-all pathways to this, but just to explore when these particular query by patient models exist, what do they look like, from a policy standpoint. What sorts of inherent limit – both inherent limitations, which are probably geographical, or express policy limitations are placed on who can use it, for what purpose, etcetera. Because that will keep us largely in the swim lane of sort of what was of most concern to the Policy Committee in reacting to the recommendation that we provided.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

So can I – do you have another slide to propose or can I bring the Surescripts question back up?

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

You can bring the Surescripts question back up, we're still on the vendor slide and this is the only one, so –

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Okay, so –

**Paul Egerman – Businessman/Software Entrepreneur**

So on the vendor slide though, before we go to Surescripts. I think what we have to do is Deven and I have to absorb all this information that was just given. And again, our focus is going to be to choose some vendors who offer this, we'll call it HIE infrastructure, to try to get some representative understanding of what is happening and how well it's working.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

David, I don't know that that precludes your point on Surescripts.

**Paul Egerman – Businessman/Software Entrepreneur**

Yeah, no. So let's move on to Surescripts then. I just wanted to make sure I said that to go around this slide, because Surescripts is sort of like a little bit of a different category. So let's talk about Surescripts.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Okay. So I just would point out that they are probably the largest aggregator of demographic information for purposes of matching a patient to their prescribing records, both formulary records and dispense records from the pharmacies. So, they are – and they do that all in the background, so you submit a patient query and you get back the answer, and there's not an intermediate step. So, to me they fit the category of what I think might be an emerging market, a national scale aggregator. And they obviously are effectively de facto part of meaningful use in that you have to have ePrescribing.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

But who would query them for a health record, other than a prescription?

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Providers do, doctors, anybody who writes a prescription.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Yeah, but would they – would a doctor be coming in and saying, I want to find Dixie Baker's records, can you tell me where to go to get them.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

No, but it says, I want to find Dixie Baker's dispensed medication history and it would show you that.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Right, but that – I think that's different from what we're talking about.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Why? It's – record locator

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

I don't know why, it's the most – .complete non-targeted query.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

And that they actually use standard MPI record locator software to do it.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

But they're just looking for the prescription.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Well, that's some of the most sensitive data that's out there.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Well of course. But – hmm. I thought this – Deven brought this up, she said this is a – we envision this as an emergency situation –

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

No, no, no.

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

I think we need to put that to rest.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

I gave that as an example, it was not intended to be characterized as a limitation on the scope.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Well I –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

Yeah and sort of more even if it were an emergency situation, somebody shows up at the ED, knowing what –

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

That's what I was just going to say –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

– meds they're on –

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

– so, I changed my mind. Changed my mind.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

And in fact, that's a key market, I believe, for Surescripts is they have a service that they market to emergency rooms and ambulatory clinics, it's not part of the ePrescribing service, but does exactly that.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Okay –

**Paul Eggerman – Businessman/Software Entrepreneur**

Okay, so you're suggesting including Surescripts and I'm thinking about that. We took the state HIEs and we broaden it, Gayle's suggestion, to regional. And this is more than regional, sort of like it's a national, it's limited to basically prescribed medications that are on the Surescripts system –

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Right.

**Paul Eggerman – Businessman/Software Entrepreneur**

It seems like that...it's a reasonable candidate to consider.

**Dixie Baker, MS, PhD – Martin, Blanck and Associates – Senior Partner**

Um hmm. Yeah.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

And I would be happy to volunteer to go get someone from CommonWell, but you're criteria of systems that are up and running would preclude them. They're a planned system, obviously, but not yet up and running.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yeah, I think we want to see what we can get from the planned systems. One of the things that benefits us as a Tiger Team is that we have some significant expertise already on board that can help us during the discussion phase of this. It sort of lets us get some more additional data in the pipeline, even when we don't directly hear from you, you're in the planning stage, but your experience can be brought forward as part of your role as a person who can discuss these issues on the Tiger Team. Same is true for Judy. So in some respects what we try to do with some of these testimony slots is to bring in the experience that we wouldn't already have around the table.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

Okay, as long as you let us talk.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Well I try David.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

And we are pretty intrusive if you don't.

**Judy Faulkner, MS – EPIC Systems – Founder and Chief Executive Officer**

Yes. So Deven, would you like us there, too, EPIC.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

I mean I certainly hope, along the same lines Judy as we discussed in terms of trying to focus on the models that are actually doing the type of services that we're trying to focus on, but benefitting from having, as we always do, from having your experience at the table. I certainly hope that you will be able to participate as a Tiger Team member, but not necessarily have you fill a testimony slot.

**Paul Egerman – Businessman/Software Entrepreneur**

Yeah. This is Paul. From my standpoint, it's easier if Judy and David are like on just one side of the table, on the questioning side. It gets a little tough when they're on both sides and I think we can do that with this structure. I also think that what we need to do is to be – to do a lot of like, I don't know what the right word is, it's like preamble, almost like explaining that we're not trying to do a complete view of the query-response, everything that's available. We're being very, very, like laser-like focus on one set – one architecture, one set of questions, that there are other ways of doing this –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

I think you need to put –

**Paul Egerman – Businessman/Software Entrepreneur**

– we're talking about in this hearing.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

I don't know if it's one architecture Paul, but it's one –

**Paul Egerman – Businessman/Software Entrepreneur**

You're right, one –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

I think you need to schedule at least 15 minutes for one of you two to present enough history to make that context clear at the start of the virtual session.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yeah.

**Paul Egerman – Businessman/Software Entrepreneur**

Yeah.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

And I agree that we should stay away from –

**Wes Rishel – Gartner, Incorporated – Vice President & Distinguished Analyst**

– someone else.

**David McCallie, Jr., MD – Cerner Corporation – Vice President, Medical Informatics**

And I agree with staying away from any notion of a particular architecture, it's really – this is a policy debate.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yeah.

**Paul Egerman – Businessman/Software Entrepreneur**

Well that's right, which is actually at the core of why we've got a challenge. So we've got to write a policy that works for like lots of different architectures and lots of different concepts as to how it works. It would be simple if we sort of said, everybody's got to do it this way. Then you'd have one policy, but there is a range here of what is happening, that makes it a much greater challenge to figure out how to write a reasonable policy.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Okay. This has also been helpful feedback. I think it probably was – if any of these HIEs or companies had been on the line, they probably found it somewhat mildly amusing about how we’re characterizing some of their services. But, we will be reaching out to folks – first we have to find a date for this, then I think we can begin to figure out what the list of testifiers looks like. And completely agree that there will need to be some additional framing that we do at the beginning of this hearing and certainly in the materials that we provide as we reach out to these testifiers so it’s very clear what we’re looking for. And that will help us make sure that we’re getting the people to the table who can provide us with the most amount of information in terms of what we’re looking for.

And we’ll also have to get some additional – get a revision of the questions out to all of you. It probably would be helpful for us to work on that sort of framing as well, to get some feedback on it. So, because as is always the case, I think, with some of these issues, we – just defining the scope of it turns out to be almost as much of a challenge as answering the questions. So –

**Paul Egerman – Businessman/Software Entrepreneur**

But to define – you’re right but defining the scope is important, because otherwise we’re going to have a 2 or 3 hour hearing that will be very interesting, but will not necessarily lend itself well to us to somehow synthesizing the information and coming up with some consensus around what we think.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Right.

**Paul Egerman – Businessman/Software Entrepreneur**

And so we need to make sure that we understand that and clearly articulate it.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Got it. All right. So we’ve got a tiny bit of time left to get some feedback on a couple of additional Tiger Team future topics that were teed up in our strategic plan. And we’re just trying to figure out, beyond this query issue, which is certainly front and center on our minds, what other topics should we begin to tee up for our work. And there are two that are suggested, they are, reading them off the slide, privacy and security with respect to cloud models for EHR. So it says cloud computing, but we’re not picking on cloud computing at large, we’re taking it on in the context of electronic health information storage and exchange. And then right of access, and this is with respect to patients in an electronic environment.

So, those were just two topics that we sort of pulled from the list. And admittedly, we pulled some that were sort of less dependent on the sensitive data, data segmentation issues that are currently involved in the pilots, because we want to give those pilots some time to sort of tell us a little something about that set of issues, which continues to be very difficult. So these were perceived to be non-related to data segmentation and so potentially ones that could be dealt with, without necessarily triggering those issues. But we’re not necessarily limited to these two, but these were two that had been teed up for us and potentially put on our work plan for the year.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

So why didn’t you want to do data segmentation, I’m sorry, I missed that.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Because there are ongoing pilots –

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Okay.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

– of data segmentation technology and we want to understand a little bit more about how those are going before we try to make some decisions from a policy standpoint that are dependent on technology capabilities that are currently being tested.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

So that is – but that is something that will be teed up in the future.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yeah. Yes.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Good. Thank you.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Yeah, because there are whole lot of questions on our agenda that are really quite dependent on understanding more about the technical capabilities, minors being one of them. Does anybody have a burning desire to make sure we take one of these on next or another question you don't see on this list?

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Can you also describe what you mean by right of access, by whom.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

I believe we mean patients, because there aren't too many people that have a right of access beyond – a right, a legal right of access beyond patients and the government, but I don't think we were talking about the –

**Leslie Francis, JD, PhD – University of Utah College of Law**

There's also personal representatives in that.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Right. Representatives, yeah.

**Leslie Francis, JD, PhD – University of Utah College of Law**

And there are huge issues about that.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

That's –

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Well not only that, but the rights of minors and/or lack of rights of parents when minors can consent to treatment.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Right, but that's the reason why we are not teeing up minors yet is because honor – in being able to honor some of those minors rights, which often are both – are data – dependent on type of data –

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Right.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

– that's the segmentation question that we want to have more information before we can address it.

**John Houston, JD – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**

Right.

**Leslie Francis, JD, PhD – University of Utah College of Law**

But the adult personal representative question raises the issue both of identity proofing and of appropriate authorization, both of which are thorny.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

They are. That's a really good point. Is that something that we can answer with federal policy given potential state law differences, do you know Leslie?

**Leslie Francis, JD, PhD – University of Utah College of Law**

Well the way in which...and one thing that could be done, because currently federal law in the identification of personal representatives, defers to state law. But there are things that could be done, for example, notifying patients if a personal representative is – to access their records, requiring that capability.

**Gayle Harrell, MA – Florida State Legislator**

This is Gayle –

**Leslie Francis, JD, PhD – University of Utah College of Law**

I'm thinking off the top of my head, too quickly.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Right. No, I understand, it's sort of –

**Leslie Francis, JD, PhD – University of Utah College of Law**

But for example, the federal power is things like how Blue Button gets used –

**Gayle Harrell, MA – Florida State Legislator**

This is Gayle. I think it's very state dependent, it varies from state to state, there are very specific laws in various states on age and you have senior representatives. For instance, there is an adult child taking care of a parent who's incompetent, there are certain things that you have to do at the state level to be able have access to things, various powers of attorney, stuff like that. As well as courts in various states, you have certain laws regarding sexually transmitted disease information, contraception, things of that sort that parents do not have access to their children's records on. So, it's very state dependent.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Hmm. But I'm glad you teed that up Leslie, we'll give that some thought, in terms of sort of talking with ONC about scope issues and whether we think that there are possibilities in terms of the tools that are – us making recommendations to ONC, Meaningful Use and sort of where our – the spectrum of our recommendations fit.

**Leslie Francis, JD, PhD – University of Utah College of Law**

Yeah. And I would just add on that the authentication question, which may or may not be the same as the patient authentication question, are in separate who is the PR under state law and what limits are there on PR access under state law.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Okay. Thank you. Anybody else have any other suggestions before we move to public comment? All right. Thank you all very much for a lively, incredibly – we will be back to you with more refinement on the – of language and testifiers and date on the hearing issue. We'll figure out whether Paul or me will be leading the subgroup and we'll get some time scheduled for that as well, on the security risk assessment.

Anything else Paul?

**Paul Egerman – Businessman/Software Entrepreneur**

Nope, I think it was a very informative and spirited discussion, so –

**Leslie Francis, JD, PhD – University of Utah College of Law**

As always.

**Paul Egerman – Businessman/Software Entrepreneur**

– as always. And see if we can get a chance for public comments.

**Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

Go ahead MacKenzie.

## **Public Comment**

### **MacKenzie Robertson – Office of the National Coordinator – Federal Advisory Committee Act Program Lead**

All right. Operator, can you please open the lines for public comment?

### **Caitlin Collins – Altarum Institute**

If you are on the phone and would like to make a public comment please press \*1 at this time. If you are listening via your computer speakers you may dial 1-877-705-2976 and press \*1 to be placed in the comment queue. We do not have any comment at this time.

### **Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

All right. Great. It will be –

### **MacKenzie Robertson – Office of the National Coordinator – Federal Advisory Committee Act Program Lead**

Deven, this is MacKenzie. Before we close, I was just looking at the list of upcoming Tiger Team meetings to see which ones we'd be able to use for the hearing, and it looks like the only one that had time before and after it was the June 7<sup>th</sup> one. The other Tiger Team meetings on the calendar for June and into July we'll have to see if we can rearrange the schedule a little, because there are other workgroup meetings that sandwiched in.

(Phone ringing and assorted comments)

### **Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

We'll work with you, I think June 7 is probably too tight, we probably can't make it.

### **MacKenzie Robertson – Office of the National Coordinator – Federal Advisory Committee Act Program Lead**

All right.

### **Deven McGraw, JD, MPH – Center for Democracy & Technology – Director**

All right. Thanks.

### **MacKenzie Robertson – Office of the National Coordinator – Federal Advisory Committee Act Program Lead**

Thanks everybody.