

**HIT Policy Committee
Privacy & Security Tiger Team
Transcript
November 18, 2013**

Presentation

Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator

Thank you. Good afternoon everyone; this is Michelle Consolazio with the Office of the National Coordinator. This is a meeting of the Health IT Policy Committee's Privacy and Security Tiger Team. This is a public call and there will be time for public comment at the end of the call. As a reminder, please state your name before speaking as this meeting is being transcribed and recorded. I'll now take roll. Deven McGraw?

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

Here.

Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator

Paul Egerman?

Paul Egerman – Businessman/Software Entrepreneur

Here.

Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator

Dixie Baker? Judy Faulkner? Leslie Francis? Larry Garber?

Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group

Here.

Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator

Gayle Harrell?

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

Here.

Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator

John Houston? Dave McCallie?

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

Here.

Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator

Wes Rishel?

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

Here.

Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator

Micky Tripathi? Kitt Winter? And are there any ONC staff members on the line?

Kathryn Marchesini, JD – Policy Analyst – Office of the National Coordinator

Kathryn Marchesini.

Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator

Hi Kathryn? And I actually think that we have a new representative on the line from OCR Khurram are you on?

Khurram Haleem, CISA, CISSP, CIPP US/G/IT, CRISC – Analyst – Office for Civil Rights

Yes, I'm here.

Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office for Civil Rights

Hi, Linda Sanches is on the phone as well.

Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator

Hi, Linda, thank you, hi Elizabeth.

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

And so is Judy Faulkner.

Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator

Hi, Judy, thank you. And I will pass it back to you Deven.

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

Okay, terrific, thank you very much Michelle we appreciate it. Welcome everyone to the call including members of the public we very much appreciate your time. We're going to be talking again about the issue of accounting of disclosures and continuing to work on our recommendations. Just to walk you through what we aim to do today we're on track I think to finalize recommendations to make a presentation to the Health IT Policy Committee at its meeting on December 4th.

We do though have a meeting already on the schedule for December 2nd so if we need to use that meeting to clean up any issues we have the time available, it's a little close to the time when the Policy Committee is meeting so I think we want to try to reserve that meeting for battling cleanup issues as opposed to taking on some large issues if we can we should try to resolve those today.

What we're going to do is to run through and remind everybody of the recommendations that we have developed over the past couple of weeks. We sent these out to you along with the wording of the summary of the hearing and the summary of comments that we received on the Health IT Buzz Blog. We sent those out to you last week for wordsmithing, but we wanted to remind everybody about sort of where we had progressed with previous recommendations because that obviously lays the foundation for the next set of issues that we want to spend the bulk of the time discussing which is the use of a follow-the-data approach and Paul Egerman will explain that concept to you when we get to that point.

And then we want to make sure that the phrase disclosures through an EHR, which is the language that's actually used in the HITECH legislation have we sufficiently addressed that and then of course if there are other issues that we need to talk about Tiger Team members should surface them on the call.

So, before we sort of quickly run through the recommendations that we've been developing over the past several weeks I want to pause for a moment for Paul to add any thoughts.

Paul Egerman – Businessman/Software Entrepreneur

No I think that's a good summary Deven so let's dive in.

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

Okay, great, thank you. All right, so walking through where we were and again we're not trying to wordsmith any of these, which was the reason for sending you the language previously, but certainly from a conceptual stand-point if there are continued issues that we need to discuss on this call this would be the time to flag them.

So, the first recommendation is for HHS to proceed with implementing HITECH in a step-wise or staged fashion pursuing an implementation pathway that's workable from both a policy and a technology perspective and in approaching these issues we're really endorsing a philosophy of less is more and there are probably some other ways we could articulate that too, value over volume was suggested or quality over quantity, but what we're talking about here is that the scope of disclosures and the related details to be reported to patients provide information that's useful but without overwhelming them or placing undue burden on covered entities.

And by less is more what we mean, in particular, is that in responding to the HITECH requirement to account for disclosures for treatment, payment and health care operations HHS should focus, at least initially, on disclosures outside of the covered entity or the organized healthcare arrangement. Technologies to accomplish this though need to first be piloted by ONC and the focus first should be on provider EHRs, which is essentially what HITECH directs.

After the pilots and the initial implementation HHS could then determine how to expand to additional HIPAA covered entities. The pilot should focus both on the technical feasibility of disclosure reports as well as the feasibility and usability of the reports for patients and the implementation burden on providers and the pilots should also enable ONC to assess readiness for future stage of EHR certification.

With respect to the report content the accounting of disclosures should require only an entity name rather than the specific individual who is the recipient of the data, which was originally proposed. Testifiers at the hearing stated that this proposed requirement may subject employees to privacy intrusions and create safety concerns.

The content of the report should also be part of what gets tested in the pilot and such testing should include the possibility to group similar disclosures together versus reporting them individually, which is already permitted by the proposed accounting of disclosure rule.

We also reinforce the importance of the right of an individual to an investigation of any alleged inappropriate access. The results of our hearing indicated that the investigation rather than an accounting may satisfy many patient concerns and we also note the ability of patients to actually obtain a report that includes disclosures that would be considered to be breeches but are not necessarily required to be reported affirmatively to patients due to the breach notification standard.

We also recommend that to improve the ability of covered entities to do investigations of inappropriate access the Office for Civil Rights should clarify that the auditing provisions of the HIPAA Security Rule should be clear that the information collected in an audit trail must be sufficient to support the detection and investigation of potential inappropriate accesses or uses of PHI and you can see that the actual language of the existing audit provision is in the footnote to that slide, so this recommendation would strengthen the audit provisions of the security rule.

So, I'm going to pause there, for those of you who are not on line and are trying to follow the slides we're all the way up to slide 9, which is the new material that we teed up for discussion, but I want to pause and take any comments, not wordsmithing ones but issues that folks have with the recommendations that we have previously discussed and captured for you here on these slides.

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

Wes.

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

Hi Wes.

Paul Egerman – Businessman/Software Entrepreneur

Go ahead Wes.

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

Yeah, so the gist of the proposed regulation was to substitute requirements for accounting for disclosures under TPO for a different right which is the right for accounting of access. The way I understand it we're going back to accounting for disclosures here, is that correct? That is we're not – I mean, it seems to me the language is mixed between language that would be appropriate for accounting of access and the actual language which says accounting for disclosures here.

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

Wes, I –

Paul Egerman – Businessman/Software Entrepreneur

Wes I think you've got –

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

Go ahead Paul.

Paul Egerman – Businessman/Software Entrepreneur

A good point because our focus really is on accounting of disclosures but what we've done here sort of, this is what I'm going to talk in a minute about this concept of follow the data, is sort of define starting to define "well, gee, we're going to look at disclosures external to the organization somehow" and that that is what an accounting of disclosures is – and everything else is sort of like access that's internal and that falls under like the part of the process where –

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

Yeah.

Paul Egerman – Businessman/Software Entrepreneur

You know, covered entities have to do investigations if there is a potential of an issue.

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

Yeah, so I now get what's going on here which is that you're talking about the difference between an investigation and accounting of access and you're suggesting beefing up the audit requirements to support better investigations and I certainly don't want to wordsmith at this point, but I would suggest that there is a clarification available in that area.

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

Okay, okay that's fair.

Paul Egerman – Businessman/Software Entrepreneur

Okay. So, what you're saying is, if I'm hearing you right, you're agreeing with what we're doing it just didn't come across correctly in the slides?

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

Yeah it looked to me – yeah, you're right and it could entirely be my mindset as I was hearing it being spoken, but I maintain my mindset is no more bizarre than many readers out there.

Paul Egerman – Businessman/Software Entrepreneur

No, I think that's a very fair comment, you know, I mean, it goes back to – again the way I'm looking at it is sort of like the way Dixie described it there is internal and external and the internal is subject to investigation when there is a possibility that something went wrong.

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

Yeah.

Paul Egerman – Businessman/Software Entrepreneur

And the external is what should be on the accounting of disclosures.

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

And of course the confounding factor –

Paul Egerman – Businessman/Software Entrepreneur

– that's just a right that a patient can get that information.

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

And of course the confounding factor is that an access by most physicians who are not employees of a hospital is a disclosure.

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

Well –

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

And I think that was a shock.

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

Yes, but and this is Deven, but that's why we're trying to be clear that we are suggesting to HHS that they should, for purposes of initial implementation of HITECH, focus on disclosures that are actually external to either the entity or the OHCA.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Deven?

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

Like –

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

Yeah.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

This is Leslie, I'm sorry I joined a couple of minutes late. All the way through the slides I just wanted to put in a little point right now, I thought the way you said it right now was terrific, but I'm not as clear if that's what comes through on the slides that this is – for example when you say at least initially to some extent my worry is that there wouldn't – that the implication is that there wouldn't be a need to go further at some point in time. But the way you just put it was just right that this is a first step.

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

We can make sure that that's clear.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Thanks.

Paul Egerman – Businessman/Software Entrepreneur

Yeah, the way it was written in the slides, I'm going to actually go back to that slide –

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

Yeah.

Paul Egerman – Businessman/Software Entrepreneur

It's one of the very first ones. Let me find it.

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

And if I could just pile on one more thing, Wes again, I'm not – it's not clear to me and I think it takes a legal person to tell us, but it's not clear to me that a community physician who attends a patient in the hospital is a member of an OHCA with the hospital.

Paul Egerman – Businessman/Software Entrepreneur

Okay and I have a – that's why I want to talk about this concept of following the data in a minute.

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

Yeah, okay.

Paul Egerman – Businessman/Software Entrepreneur

But I first want to make sure I also respond to, I think it was Leslie who made that comment before, I went to the slide and the idea here is that there is sort of like a step-wise function captured although as I read it I do think we have to wordsmith it.

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

Yeah.

Paul Egerman – Businessman/Software Entrepreneur

Because it does say initially pursuing an implementation pathway that is workable from both a policy and technology perspective which sort of implies we'd start with one that is workable and then move to one that is not workable and I don't think we – that's what we meant but –

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

What a wonderful point.

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

Do you want to add on somebody else's ship to that or –

Paul Egerman – Businessman/Software Entrepreneur

But I don't think that was quite what was intended when we said initially workable.

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

No.

Paul Egerman – Businessman/Software Entrepreneur

But the idea here, which was like everything else though, is this is a building process where we've got to do some things and see what works and then hopefully build upon that, it's not like that there is a final solution to any of these things.

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

Right, I think we also say, on the less is more slide, that HHS should focus, at least initially. So, but again, more, you know, making this more clear, it's always helpful – it might seem perfectly clear or reasonably perfectly clear to Paul and me but it's nice to get feedback that there's stuff that isn't as clear as we thought it was.

Paul Egerman – Businessman/Software Entrepreneur

Okay, do we have other comments about what we've done?

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

This is –

Paul Egerman – Businessman/Software Entrepreneur

– progress in place, somebody is trying to speak? Is that David.

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

Yeah, it's David, I'm sorry if my connection isn't so good. I know we're not wordsmithing but when you rethink the words that the less is more is a little bothersome because it kind of points out that you're releasing less than you could and what we're trying to do is release what's appropriate. So, appropriate and useful or some term that emphasizes the positive rather than the what you're not doing negative.

Paul Egerman – Businessman/Software Entrepreneur

That's a helpful suggestion, I appreciate that.

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

Yes.

Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group

Yeah, this is Larry, I'd have to agree with that.

Paul Egerman – Businessman/Software Entrepreneur

I think you're right, I mean, it turns out less is more, it works well in the context of what we're trying to do but people may not realize the actual amount of detail that was in the access report is one of the problems.

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

Yeah, right.

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

Yes.

Paul Egerman – Businessman/Software Entrepreneur

And so we're looking at a more focused approach that would be more usable somehow to express that.

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

Yeah, yeah focused and usable, and appropriate, and yeah useful things like that. I just – you know, in our context we understand what less means, but a naive reader who wasn't part of the debate won't understand that and they'll say "what are you withholding."

Paul Egerman – Businessman/Software Entrepreneur

Yeah that makes sense.

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

And this is Gayle; I think we need to approach it from a quality over quantity point-of-view.

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

Yeah, yeah that was the suggestion that someone had.

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

I think that is much, much more appropriate and the saving grace is that patients still have the opportunity to question and to have an investigation, and the fact that individuals, but the workers must be able to have an audit trail capable of providing it, a significant investigation.

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

Great and did I hear Larry in the background trying to squeeze in a comment?

Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group

Oh, I was just piling on saying that I agree that less is more sounded, you know, like some political twisting that was not going to work well for you.

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

We will fix that.

Paul Egerman – Businessman/Software Entrepreneur

Okay. Yeah that makes sense. So, do we have other comments on what Deven just presented which is the summary sort of of the recommendation so far and also speaking to one of Wes's comments it is a little bit out of context in the sense that when we present it to the Policy Committee we will also be presenting the slides that show the results of our hearing so that's where we will talk a little bit about the access report and the feedback that was given about the details and, you know, the amount of detail and the practicality of that report.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

The slide about not identifying individuals, the testimony was really about access not about disclosures.

Paul Egerman – Businessman/Software Entrepreneur

That is true but we can make whatever recommendation that we want and the testimony –

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

We could.

Paul Egerman – Businessman/Software Entrepreneur

Did include concerns about patient safety of healthcare employees.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Right.

Paul Egerman – Businessman/Software Entrepreneur

And so I think this – again this is our recommendation this is not a summary of the hearing, this is our recommendation and so we're saying in some value aspect we need to make sure everyone's on board and clear, we're saying that the accounting of disclosures will do the entity name rather than a specific individual. So, the entity name could be, you know, UPMC, you know, a very large organization as opposed to an individual at UPMC, if the entity –

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

But of course there may be disclosures to individuals.

Paul Egerman – Businessman/Software Entrepreneur

Well, that's right, that may be who the entity is, right, in other words, the entity is a solo physician then that's the entity name, right, and so this is the individual, but it's not – in other words it's just requiring at the entity level and so if you disagree with that you should speak now or forever hold your peace. So, I mean, are you okay with that Leslie or are you just looking for clarification?

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Well, I think that's less to – extent that it may be meaningless. So, you might care whether it's the ortho clinic at UPMC for example.

Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group

See this is Larry –

Paul Egerman – Businessman/Software Entrepreneur

Well you might be able to but you might not it depends on the –

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

Right.

Paul Egerman – Businessman/Software Entrepreneur

On the organization. I mean, I used UPMC as an example because it's a –

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

Right.

Paul Egerman – Businessman/Software Entrepreneur

Very large healthcare organization but you can look at, you know, you could look at some organizations that might be a – you know, maybe there's a 30, 20 or 30, or 40 person group practice and it really would be adequate to say to that group practice name that's your disclosure, especially since everybody kind of shares data within that entity and the ortho clinic might only be one or two people but at the same time it just might not make sense to specify it at that level or they might not even have an ortho clinic so it's – you know – but I don't know if other people have comments?

Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group

Yeah, this is Larry –

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

Well, I'm just – go ahead Larry.

Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group

Oh, I was just thinking that, you know, I think being too specific is actually meaningless because what happens is with that ortho clinic, you know, the record presumably becomes part of the electronic medical record that anyone in the organization can then access and we're not, you know, disclosing those accesses, so, you know, you're deceiving someone to say "oh, it was just released to the ortho clinic" when actually the primary care doctor there may also have seen it. So, I think doing it at the organization level actually is probably the most appropriate.

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

Okay.

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

This is Gayle, I'd like to say something if I may? I think it's important that should the individual, the patient want an investigation that we have the capability of finding out that her ex-boyfriend got a hold of her current STD record.

Paul Egerman – Businessman/Software Entrepreneur

You're breaking up a little bit, but could you say it again Gayle?

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

Well, I think it's important that for the – not so much for the accounting of disclosures but for the ability to have an investigation that you have the audit log available so that in case someone is very concerned that her ex-boyfriend is trying to get a hold of her STD record for instance that she has the ability to find out if that happened.

Paul Egerman – Businessman/Software Entrepreneur

Yeah that's correct, so the way this would work would be you account for the disclosure so it goes to some healthcare entity, but that healthcare entity also has to keep their audit logs and has to be able to do an investigation if you believe that there is some reason why you would like that entity to do an investigation.

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

I think that's a very important differentiation and point for the public that they understand that the audit logs are there, that the accounting for disclosure is on one level but there is a depth of material underneath that should they have a reason and want an investigation the capability is there.

Paul Egerman – Businessman/Software Entrepreneur

Okay.

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

That is a huge issue.

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

So, this is Deven, so here's another suggestion to avoid this looking like an over specified recommendation where, you know, you couldn't have something at below and entity level. The existing actual accounting of disclosure report requires either identification of the natural person or the entity that received the information, which provides some flexibility to the recipient to determine on some level how they want to be specified as opposed to the access report, the proposed access report, which currently would require an individual and clearly we don't want an individual name necessarily required but leaving it open that it could be, you know, some recipient has to be identified, but there can be some flexibility in how that's handled. Would that work better?

Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group

I mean that would probably be okay, this is Larry, but I do think the point that was just brought up where we do specifically point out that these audit trails are intended for both the sender and the receiver.

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

Oh, absolutely, yeah, two separate points I think.

Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group

Yeah, so I think your point is good that would work.

Paul Eggerman – Businessman/Software Entrepreneur

Yeah that works. In fact as I think about it –

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

Could I ask –

Paul Eggerman – Businessman/Software Entrepreneur

I think that works that is an improvement too, because, you know, say you're in a hospital and they send information to your primary care provider you might think about that in terms of my primary care provider's office as opposed to the name of the healthcare organization. So, providing that flexibility could make some sense there so that's good. Was somebody else trying to say something? I'm sorry was there somebody else trying to say something?

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

I don't think so.

Paul Eggerman – Businessman/Software Entrepreneur

So, before we go on in the agenda, I just want to say – everybody is comfortable with these recommendations. Do we have any other comments before I go onto like the next topic? So, the next topic then relates to this question that Wes was raising which is, you know, like somebody may not consider or understand that say a physician in the community is not a member of the OHCA and how all this works.

And what I really hear as sort of like a straw recommendation as to how to understand this whole thing is I can just call – I wrote it down is to follow the data but it's actually very similar to what we said about our Meaningful Use choice, what I'm trying to sort of suggest is, you know, we look at these words like disclosure and OHCA and business associate and these are sort of like legal terms that describe organizations, but maybe the easiest thing to do is to think about the whole thing in terms of just the data itself and to see – follow the data to see what happens to the data and to make a distinction between when the provider retains control of the data and when the provider loses control of the data.

So, if the provider maintains control of the data and that means they can assign like, you know, user accounts or it means that, you know, they can determine when any of the data can be disclosed further than its internal, than their in control of the data and their responsible for using audit trails or some other technology to investigate any concerns.

But when the provider loses control of the data, and the way that we made distinction for our – three years ago for our Meaningful Use choice recommendations, then the information – you know, the target belongs in an accounting of disclosures report and to use that as a way to make the distinction between internal/external, between, you know, internal investigation versus it automatically goes on the accounting of disclosure reports.

So, that's the straw recommendation as to how to like figure out all these different distinctions about things like community physicians and things like that as to say "well what happens to the data" rather than "what is the OHCA or the business relationship." What do people think about that?

Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group

Well, this is Larry, I have a question. So, I – you know, I'm in my organization, I'm in a group practice, I see patients and the reason why I don't just take the information I know and, you know, run with it to the Boston Globe is a few things, one is, you know, federal regulations, another is that my organization, you know, will summarily fire me. So, is that what you mean by an organization having control of the data that they can punish me if I do something inappropriate with it?

Paul Egerman – Businessman/Software Entrepreneur

Well, absolutely they can punish you, they also determine that you have the right to have access to the data and they've given it to you. And so they are – that's control of the data. They lose control of the data when they take the data and they give it, for example, to a health information exchange organization where somebody else can make that decision or use the data for some other purpose.

So, a health information exchange organization that belongs on an accounting of disclosures report, this definition, but your access does not because you have some relationship employee or otherwise the entity is giving you access to the information and the entity is responsible for your actions and so if you do something inappropriate, you know, the entity will investigate it and take some – do something in response, but, you know –

Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group

But if I have a contract with the health information exchange, if my organization has a contract with a health information exchange that, you know, I can sue them for damages if they inappropriately release my information then I do still have control of that –

Paul Egerman – Businessman/Software Entrepreneur

I don't think so. I don't think so. If the health information exchange organization – again this is part of our meaningful choice decision, if the health information exchange organization can make decisions about what other organizations or entities can access a patient's medical data, if they can resell the data, if they can give access to the data to insurance companies those are all decisions that are outside the control of the original provider entity. So, the provider has lost control or the provider is not in complete control, it's better to say is not in complete control of the data and so it belongs on the accounting of disclosures report.

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

Yeah.

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

Paul, this is David, I was going to make that comment that it's not that they lose control it's that control passes to some other entity outside of their control.

Paul Egerman – Businessman/Software Entrepreneur

That's correct.

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

It's the loss of control sounds like a breach –

Paul Egerman – Businessman/Software Entrepreneur

Yeah, so that's stating it incorrectly, so I appreciate that observation, but it's sort of like another entity obtains control and can do some things with it –

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

Right.

Paul Egerman – Businessman/Software Entrepreneur

Like it most notably can further disclose the data, disclose it to other covered entities or it can make decisions about how it's used for research purposes, to make decisions that the provider no longer can make.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

And could corrupt the data.

Paul Egerman – Businessman/Software Entrepreneur

Potentially, yeah.

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

Yeah. This is – this is Deven, I like this from a conceptual stand-point because it really does focus on data that leaves a trusted environment where the provider is the sort of steward and responsible for the privacy and security of that data and it's moved into a place where the provider isn't in control of those decisions anymore and those decisions could be made by the other entity, and it is incredibly in line with where we were previously on this issue when we considered it in the context of meaningful choice.

I think the only thing that could be a challenge, and this is why I'm glad we're calling for pilots, is how you teach a computer to distinguish when there is this sort of loss of control, because there is – you know, the data may in fact pass to an HIE in a circumstance where in fact the provider still does have control in certain HIE arrangements and in others they would not and so it's a very – you know, the trigger for the reporting requirement I think is in the right place conceptually. I'm just trying to wrap my head around how you do that, how the computer figures that out.

Paul Egerman – Businessman/Software Entrepreneur

Well, I think I have an answer to that, but let's –

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

Well, good.

Paul Egerman – Businessman/Software Entrepreneur

Let's walk ourselves through the process and it's also an issue of like how do you define control –

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

Right.

Paul Egerman – Businessman/Software Entrepreneur

And I'm not doing a very good job on that, although I do think that we don't have to do like a really legalistic definition either ourselves, we can just sort of describe the intent. But to back it up first a minute from the HIE organization I wanted to go back to Wes's question about, well, gee I don't think the patients would understand that say a community physician accessing the EHR data is not part of the OHCA.

With this variation of this approach a community physician accessing the data if the, you know, if the entity, if the OHCA gives the community physician like a user name well that's okay but the entity still has retained control of the data so that community physician is not on the accounting of disclosure report but it's still the responsibility of the healthcare organization, you know, to investigate any problems that may have occurred after all they were the ones who gave out the user name –

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

Right.

Paul Egerman – Businessman/Software Entrepreneur

You know, they gave user access to the community physician. So, if you look at it, this is again also a definition of what's internal. It also means, for example, that in many cases, not necessarily all, but probably most, but in many cases an EHR vendor for example that perhaps does like cloud computing, an EHR vendor probably is not a disclosure, right, because the healthcare entity retains control of the data, you know, the EHR vendor is simply, you know, storing the data for the entity processing, providing software, but if the entity still controls who can access the data what happens to the data, it's still internal. It only becomes – on the accounting of disclosure if somehow in that process the vendor gets some ownership rights or is able to do something more with the data.

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

So, Paul, this is Judy, what happens when it's as simple as it goes to transcription but then what surprises me sometimes with transcription is one transcriber is in Louisiana another transcriber is in Texas, another transcriber is in Oklahoma and you don't even know that it's going to those places. How does that fit in with the concept of control?

Paul Egerman – Businessman/Software Entrepreneur

Well, there are like a couple of aspects of that, first going to the Louisiana, Texas part of your question the picture that I would have is still you follow the data and if the relationship with the transcription company is such that the transcriptionist can, you know, they access the data but the company can't do anything with the data, that the healthcare organization still has complete control over the data, the data is not given out to anybody else then I say it's still internal. It doesn't include that control has still been exercised.

Now if the transcription company then subcontracts to somebody else I would still follow the data. In other words, I mean, just because they subcontract to somebody living in a different state –

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

Yeah.

Paul Egerman – Businessman/Software Entrepreneur

Or the subcontract to somebody living in a different country it's still an issue of what happens to the data and if the health organization can still control it, if there is no transfer or ownership or anything to the transcription company then I say it's not a disclosure, it's only a disclosure...

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Also –

Paul Egerman – Businessman/Software Entrepreneur

It's only a disclosure if somehow there is a transfer.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Paul, this is Leslie Francis, if the transcription company could be hacked they can do that without – I mean that could happen without an ownership transfer.

Paul Egerman – Businessman/Software Entrepreneur

Well, yeah, but hacking –

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

Yeah, but they still – Leslie they'd have to be a business associate so they would have to adopt security measures. So –

Paul Egerman – Businessman/Software Entrepreneur

The way I look at it is –

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Right, but –

Paul Egerman – Businessman/Software Entrepreneur

Anybody can be hacked –

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

–

Paul Egerman – Businessman/Software Entrepreneur

And entity can be hacked also and that's still their responsibility to provide a secure environment and to do the appropriate things when that hacking occurs and, you know, a business associate may have some contractual obligations but a healthcare organization is still responsible.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Sure but –

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

This is Wes –

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

I want to know that there had been a disclosure there.

Paul Egerman – Businessman/Software Entrepreneur

Pardon me? Well that's a different, then there's been a breach, that's a different situation. If there's been a breach you have to follow the rules for the breach.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Well, suppose that what you're trying to figure out is you know a breach happened and you're trying to figure out where it happened you might want to know where your data went.

Paul Egerman – Businessman/Software Entrepreneur

Well, absolutely and that's the whole purpose of having a discussion about what's internal and what's external.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Right that's why I think I was basically arguing that its external when it's left the entity in such a way that it's at risk of a security – I mean, there needs to be an independent security structure.

Paul Egerman – Businessman/Software Entrepreneur

You have to be careful about that, Leslie, because that's going to define as external everything unless the data is located physically at the healthcare site and I don't think that's – I think that's too restrictive.

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

Yeah, I agree with you.

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

This is Wes, isn't it the case that the current regulation and not the legislation define copying information and giving it to a business association as a disclosure that is covered by – depending on what the business associate is doing is covered by TPO.

Paul Egerman – Businessman/Software Entrepreneur

It could be Wes but what I'm trying to say is it's a better solution, in my opinion, to follow what happens with the data rather than trying to make a decision about whether or not it's a business associate and what the business associate –

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

Oh, I'm not meaning to say it's a differential treatment to whether it's a business associate, in fact, as I understand it if you give data to someone and they perform a function for you they are a business associate period.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Right.

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

I mean, what I'm saying is that the current regulation clearly says that a disclosure to another entity that transferring a copy of personally identifiable data to another entity is a disclosure period full stop. That in the past those disclosures for TPO were exempt from reporting and that changed in the 2009 HITECH Law but I'm just wondering how deep into the regulatory framework would we be going in order to implement a different philosophy in terms of defining what a disclosure was.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Yeah, I think we should not make that change. I mean, I think disclosures to business associates for TPO was exactly what HITECH was designed to –

Paul Egerman – Businessman/Software Entrepreneur

So, you think that every – a patient on accounting for disclosures get a list of all the transcription companies, all the coding companies.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Yes.

Paul Egerman – Businessman/Software Entrepreneur

All of that stuff and even the names of the EHR vendors?

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

If the EHR vendors get the data yes.

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

No, the names – oh, if the EHR vendor is a business associate of the entity, the covered entity sure, but if I disclose that I'm a hospital and I disclose data to practice it's not my obligation to know what EHR vendor the practice has.

Paul Egerman – Businessman/Software Entrepreneur

No, no, no then you just have the entity name. I'm just trying to suggest that the distinction of internal versus external should be an issue of control and for example an EHR vendor simply houses the data for the entity that's not a disclosure.

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

Well, you know, I think the – I guess I don't even necessarily agree with that I mean philosophically. I mean, it would certainly be easier to administer if that was the approach, but if the concern that we're trying to address on behalf of the consumer is casual access to a person's healthcare information –

Paul Egerman – Businessman/Software Entrepreneur

No that's not the concern we're trying to do. In other words we've got to make a distinction here, there's two different reports there's the internal investigation and there's the accounting of disclosure and accounting of disclosure just tells the patient who has your data, it's sort of like a right.

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

Who received a copy of your data. See the whole problem with this ownership thing is it's based on a concept of something tangible that you can pass from one person to another. I never give up someone's data when I give it to someone else; they get ownership of another copy of it.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

It would be the approach of just limiting it to what doesn't make sense from an ownership perspective actually would be to gut the whole point of TPO accounting of including TPOs in accounting.

Paul Egerman – Businessman/Software Entrepreneur

So, let's walk through an example, let's say you have a healthcare entity, a hospital and maybe they have their own computer system and they have their own database and so they have complete control of the data and they have a transcriptionist come in who transcribes on that database. So, in your opinion, does everybody agree, that would not be a disclosure, the transcriptionist would just be internal access.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

That's right.

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

No, well if it's a member of the workforce.

Paul Egerman – Businessman/Software Entrepreneur

Well, but I think, again we went through this in our entire discussion –

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

Yeah.

Paul Egerman – Businessman/Software Entrepreneur

That if you make a distinction about –

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

Yeah.

Paul Egerman – Businessman/Software Entrepreneur

Member of the workforce we're going to have a lot of problems, because –

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

What about using the credential – somebody who gets – who you issue credentials to access the system.

Paul Egerman – Businessman/Software Entrepreneur

Yeah.

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

They may not necessarily be an employee but you've issued them credentials, how about that?

Paul Egerman – Businessman/Software Entrepreneur

We should have had –

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

I would love to see that as the distinction, right, I mean, I think that would be great.

Paul Egerman – Businessman/Software Entrepreneur

Well that's what I'm saying is the distinction if you can code the data then that's the distinction –

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

But that's –

Paul Egerman – Businessman/Software Entrepreneur

Regardless of whether or not the transcriptionist is an employee or a part-time employee, or you get them as a contractor from somebody.

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

So, that – if this notion that you hire an individual to access your EHR and do transcription, I'm sure it happens, but it's much more common for –

Paul Egerman – Businessman/Software Entrepreneur

Well, I'm going to walk through that example in a minute.

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

All right, okay, all right, great.

Paul Egerman – Businessman/Software Entrepreneur

Okay, so that's my first example and maybe if you want you can also make this a coder so that's also an operational employee, it could be somebody who does coding.

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

Yeah sure.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Yes and if the data never leaves the UPMC system then it's not a disclosure. So, if they get credentialed –

Paul Egerman – Businessman/Software Entrepreneur

Okay.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

They can log in no problem.

Paul Egerman – Businessman/Software Entrepreneur

Okay now suppose that same person comes in with a laptop, they take a copy of the data, they put it on the laptop, they do their coding and then they destroy that copy is that a disclosure?

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

Yes.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Yes.

Paul Egerman – Businessman/Software Entrepreneur

Why?

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

Well, this is David; I'm not so sure because to get it onto their laptop they had to have a credential.

Paul Egerman – Businessman/Software Entrepreneur

Right so in other words they came in, they have a user code, they put it on their laptop just because that's a faster way to do things it's like in a local cash or something on the laptop and then it goes back to the database everything is still under control of the hospital, is that a disclosure?

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

I would say no.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

I would agree on that score if it's a laptop that's part of the hospital system with all the same, you know, hospitals impose requirements on the laptops that get accessed to their system.

Paul Egerman – Businessman/Software Entrepreneur

Okay, now suppose –

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

Yeah, I would agree if it's a hospital laptop you're still okay, it's when you get to – I just assume you're talking about a laptop owned by this contractor –

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Right.

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

Who is doing the coding.

Paul Egerman – Businessman/Software Entrepreneur

So, you think.

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

I think you're on a slippery slope here it's going to get really impossibly tricky.

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

I agree with that.

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

That's why I'm concerned about this whole approach, but yeah.

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

Yeah, I agree with – I think the more that we turn yellow flags into red flags the harder it will be to actually see and work on the red flags.

Paul Egerman – Businessman/Software Entrepreneur

That's right and so, I mean, just look at – you follow the process, so you say, okay, you put it on the laptop but instead of it being there for like 2 minutes does it make any difference if it's there for 2 minutes or if it's there for 2 days or if it's there for 20 days as long as the –

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

Yeah.

Paul Egerman – Businessman/Software Entrepreneur

As long the hospital has some level of control over it, in other words there isn't some contractor or something that says it can only be used for the hospital.

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

It – yes.

Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group

But what about if you bring your device to work that is certified by the hospital?

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

Yeah.

Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group

It's owned by that person.

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

Well, to me the distinction is when there is an employment relationship with this person – I mean, if we say that all data –

Paul Egerman – Businessman/Software Entrepreneur

I think we've through that, I mean, we can do employment relationships but that throws away our entire recommendation.

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

Well, I think we have some trouble with our recommendation, but –

Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group

Is it –

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

I'd like to make a suggestion –

Paul Tang, MD, MS – Vice President, Chief Innovation & Technology Officer – Palo Alto Medical Foundation

– make a decision. I mean –

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

You have to –

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

Can I make a suggestion? This is Deven, we at one – I can't think of the context where we made this recommendation but there is another time when we drew the line at when data left the compliance environment of the entity.

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

Right.

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

Right? So, it's not about physical necessarily, it's not about employment but it is about it moving from the ecosystem where you are responsible for compliance and moving to an ecosystem where somebody else is.

Paul Egerman – Businessman/Software Entrepreneur

And that's a good way of looking at it, because when you think about this issue about laptops, you know, people are using these things right now with their cells phones, PDAs and it's not an issue of who owns the device it's who has the compliance, who has control over the rules about what's going to happen to that information, which is what I'm talking about.

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

Well, I agree with that and that's a whole different question than data ownership.

Paul Egerman – Businessman/Software Entrepreneur

Okay and so it's not just an issue of data ownership it's who can control the compliance rules about the data.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

And that's actually who is implementing those rules. The way I heard you earlier you were suggesting that as long as there was a business associate agreement that was enough and I just –

Paul Egerman – Businessman/Software Entrepreneur

No, I never said that.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Oh, okay, well I was –

Paul Egerman – Businessman/Software Entrepreneur

That's not – so that's a misunderstanding. I'm just trying to – when I say follow the data I'm trying to say sort of like who has the sense of control or the compliance rules who can control what happens to the data, who is exercising that should help us determine what's internal and external.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Well and –

Paul Egerman – Businessman/Software Entrepreneur

And to get away from these employment rules and the business agreement...

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

–

Paul Egerman – Businessman/Software Entrepreneur

Things we can possibly get a simpler solution to some of these things, some of these questions.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Yeah, I think, I'm sorry to have interrupted, but I think the transcription company when a copy goes to it has that compliance responsibility.

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

I think there's another thing we have to throw in here which is, it talks about being able to exercise meaningful consent, if the patient, as we define it –

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

No this is – that's a different analog Judy, it's just an analogous situation, we're not dealing with the issue of consent here.

Paul Egerman – Businessman/Software Entrepreneur

Yeah, not we're not talking about –

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

Oh, okay that's the reason.

Paul Egerman – Businessman/Software Entrepreneur

We're not trying to link it to sort of the consent thing we're just saying we did the same – we traveled down this same road when we did the consent discussion.

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

Okay, thank you.

Paul Egerman – Businessman/Software Entrepreneur

So, it's sort of like saying this is a road we've been down before.

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

Yeah.

Paul Egerman – Businessman/Software Entrepreneur

And it worked in that discussion and maybe it will work in this one also.

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

Okay, yeah, because obviously that won't actually work.

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

Yeah, no, no, no, no, no, no, no we're not going to apply choice here.

Paul Egerman – Businessman/Software Entrepreneur

No, no.

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

But it sounds like what we need to do, because ultimately they're going to have to hash this out in the pilot and we're trying to give them a sense of some issues to consider with respect to what disclosures, what TPO disclosures really ought to be captured and, you know, external to the organization, did the data, you know, sort of leave the compliance environment of the covered entity and if so that that's really what should be considered a disclosure and they have to really test how that's going to work from a technological stand-point.

Paul Egerman – Businessman/Software Entrepreneur

Yeah and so –

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

But we're trying to give them some guidance as to what we mean.

Paul Egerman – Businessman/Software Entrepreneur

So –

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

I would submit that only those, only those cases where a copy of the data is clearly transmitted to an organization that has its own compliance environment represents a huge obstacle for industry right now. Where right now it just doesn't know, we just don't know all of the paths by which TPO data leaves our organization.

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

So, I'm not suggesting that it's not a challenge Wes but the reason why we're suggesting HHS pursue this through the testing of pilots was because at least a couple of the vendors at our hearing testified that if in fact disclosure were defined in a way that really just focused on external releases of data that that might be something that could be tracked in a way that could be reportable to patients.

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

Yeah, I mean, I – for a long time I shared the same view until I got into it with clients, but at any rate, I appreciate that we have a potential here to clarify a whole bunch of edge cases that were not – were being considered differently in the legal context of the regulations than I think most people in industry understood and that that would be a very valuable contribution. It just may not be – it's necessary but not sufficient.

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

Right.

Paul Egerman – Businessman/Software Entrepreneur

And this is – and my comment is, if I follow the data is this the use issues associated with the data in terms of control and compliance to make the decision as opposed to things like employment relationship which is like somewhat arbitrary in terms of how one entity does it versus another, but it's also completely confusing to the patient.

I mean, the patient doesn't really care whether or not a physician is employed or not employed by an institution and they may not only care they don't understand it but they do understand who – the fact that their data has been moved to someplace else that there's – you know, that it currently exists at an HIE organization that is something that's understandable.

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

So, Paul, this is David, I think that makes a lot of sense with respect to the question of employee versus non-employee and that control is the right way to look at it, but what about the access of the purpose for which the data transfer or copy occurs even if it is, you know, a purposeful transfer, in other words, there are some things that a provider could allow to happen to the data that would be completely facilitating the process of care, you know, he sends a copy to the referring physician at an outside organization, which I would say, you know, is quite different than he sends a copy to a marketing agency or to a research databank. Is there another access not so much around who is controlling it, but what the purpose of the data is? What the purpose of the disclosure is that triggered some to be disclosable and notifiable and some not?

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

Well, David, keep in mind that, this is Deven.

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

Yes?

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

That what we're trying to help HHS implement is the HITECH provision that requires them to capture disclosures for treatment, payment or operations.

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

Right.

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

So, it's already a narrow purpose category to begin with.

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

But I thought we were saying that as long as it doesn't leave control of – in some sense it's not notifiable even if it is being used for TPO or TPO –

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

No, we're trying to instruct – we're trying to give them recommendations on how they can in a step-wise manner figure – implement the TPO exception for disclosures at least initially through an EHR, which is exactly what the HITECH provision says. So, we're saying, okay TPO disclosures but they should really be disclosures and here's what we think you should focus on in terms of disclosures. Does that make sense?

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

So, we – I think so, though I suspect I'm still confused. So, there is some TPO activity which we would say does not require – does not count as a disclosure and there is some TPO activity that does – would count as a disclosure?

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

Yeah, we're trying to –

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

And we're trying to define the line?

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

Yeah, we're trying to help – yes, we're trying to help HHS figure out what a disclosure for TPO should be for initially implementing this HITECH provision.

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

So –

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

And that – you know, so not access for TPO, but disclosures for TPO.

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

Right, right –

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

So it is basically, it is a disclosure –

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

So could you give me –

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

If it's –

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

Hold on Leslie I don't think David's finished.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Sorry.

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

I just wanted a cardinal example of one that would require a disclosure and one that wouldn't require a disclosure just to make sure I'm aligned.

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

Okay, physician, medical staff, credentialed member accesses record in hospital to check on his patient that's a treatment access in the proposed access report it would have been required to be reported, under our framework it would not.

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

Got it.

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

TPO disclosure equals disclosure to an HIE where the HIE has control and stewardship and compliance responsibilities for the data and yet the HIE itself is limited to treatment.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Another example would be let's say a physician wants to send a record for evaluation to an external consultant and sends the relevant parts of the EHR.

Paul Egerman – Businessman/Software Entrepreneur

Yeah and in our example that's still a disclosure.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

That's a disclosure?

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

Yeah.

Paul Egerman – Businessman/Software Entrepreneur

That's a disclosure if you're sending it to an external consultant and that would be a disclosure. Sending – doing ePrescribing and connecting to Surescripts that would also be a disclosure –

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

Okay.

Paul Egerman – Businessman/Software Entrepreneur

Just to give you another example of a disclosure. I mean, part of – I don't think we got this far, part of what I'm suggesting though is things like Surescripts and the HIE organization – things that are like really common disclosures that a healthcare organization might just have like a sheet of paper they can hand off that says here's – every time we do a prescription or almost every time it goes to Surescripts and, you know –

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

Yeah.

Paul Egerman – Businessman/Software Entrepreneur

And we send all of our data to the HIE organization so it's not like you have to track it necessarily as it occurs, but sending it to the – referring to the outside expert that's definitely a disclosure in my opinion.

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

So that kind of gets back to the notice of privacy policy framework that I mentioned a couple of meetings ago, but I'm not trying to take us back there, but yeah I saw that. So, we're really trying to carve out a limited subset of internal activity that we don't think tells us a disclosure, we kind of come up with a subset that doesn't count as a disclosure even though some of them are obviously disclosures like the ones you just listed. I've got it, I appreciate the clarification.

Paul Egerman – Businessman/Software Entrepreneur

And again, the idea of looking at it is to look at just the data as opposed to these other things like employment and –

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

Right.

Paul Egerman – Businessman/Software Entrepreneur

Activities or even necessarily – it's sort of in some sense I'm pushing out the boundaries of what's in the OHCA, because I'm sort of saying, well gee if – a lot of things – something that happens frequently is community physicians are sometimes given access to, you know, to a hospital medical record system, they check on their patients, it's a good thing to do, what I'm saying if the hospital retains control of the data, the compliance information they're responsible for, you know, granting that user access that user code that's internal.

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

It might be an interesting exercise for us to come up with a list of, you know, maybe 20 or 30 test cases and then score them as to whether we think they're disclosures or not and see how well we do and how much coherence there is. I'm not sure –

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

Well, you know, no David that's not a bad idea, although 20 to 30 seems like a lot, but we actually –

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

I could give –

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

Will get this kind of pressure testing from the Policy Committee I think when we present it to them and so it would be nice to have a selection of examples.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Another, this is Leslie –

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

Yeah, I could generate 20 of them for you in 20 minutes.

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

Okay.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Another thing that potentially would be helpful is to say that we had a considerable amount of discussion about some of these problem cases and these are the kinds of cases that should be addressed in pilots.

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

Yeah.

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

Yeah, yes that's a great point Leslie.

Paul Egerman – Businessman/Software Entrepreneur

Yeah that is –

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

Deven and Paul, this is David, as I warned you before the call I unfortunately am going to have to leave the call –

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

Okay.

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

So silence for the rest of the call doesn't mean I quit or gave up it means I have to go do my talk.

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

Okay, thanks, David, we'll get your 20 to 30 examples when you're ready.

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

Yeah, yeah, remind me and I'll scoot them off to you.

Paul Egerman – Businessman/Software Entrepreneur

Well, David, you're sort of breaking up on your phone conversation, I thought he said 2 or 3 I didn't think you said 20 to 30.

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

I can do 20.

Paul Egerman – Businessman/Software Entrepreneur

So, I'm trying to understand where we are on this recommendation, is there still some confusion about what we're trying to do or is there some sense of this makes no sense –

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

I think –

Paul Egerman – Businessman/Software Entrepreneur

It has to work in the context of a pilot that there is some – but there may be other edge cases like the transcription thing that we have to work through.

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

You know I think of as were working –

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

Yeah, I – go ahead Judy, sorry.

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

Yeah, thank you I think what if we do that pilot and out of 5000 people only one is interested, is there some point of low returns that we say – you know what I'm saying.

Paul Egerman – Businessman/Software Entrepreneur

I sure do Judy, but –

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

Well that is a – yeah that is supposed to be what is tested in the pilot.

Paul Egerman – Businessman/Software Entrepreneur

But the issue here also we have to keep in mind is there is a law, right and the law says that patients have a right to this accounting of disclosure. So, part of the purpose of the pilot is to find out how you can create one that is useful to the patient that seems to comply with the intent of the law and is also practical from the stand-point of what the provider has to do.

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

Right.

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

I think I still like less is more.

Paul Egerman – Businessman/Software Entrepreneur

Right, I mean, did I say that right Deven? I mean, there is a law.

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

Yes, no you did, it is the law and that's exactly the balancing test that's in the law and we state in the recommendations, and we'll make sure it's clear, that that litmus test is supposed to be guiding the pilot. So, not just whether it's technically capable but is it technically capable in a way that meets that balancing test? So, I think we probably do need to spend a bit of time on the call –

Paul Egerman – Businessman/Software Entrepreneur

Under this.

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

In December working through some of these examples, but we can certainly do some wordsmithing work on this particular piece and work through some examples and just make sure that we have it as clear as we can possibly get it, you know, mindful that, you know, part of what needs to be tested in the pilot are the sort of the implementation aspects of this and we need to recognize that we probably won't be able to tie it all up neatly with a bow and take care of every single possible circumstance.

Paul Egerman – Businessman/Software Entrepreneur

Right and I hope I'm saying this right, but the sense I've gotten from this discussion is people are okay with this concept but there is a fair amount of confusion about it also which is also why we want to go through the examples to really understand it.

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

Yeah, yeah.

Paul Egerman – Businessman/Software Entrepreneur

Is that a fair summary?

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

This is Gayle, I would submit –

Paul Egerman – Businessman/Software Entrepreneur

–

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

– and there needs to be some – on it too.

John Houston, JD – Vice President – University of Pittsburgh Medical Center – NCVHS

Hey Deven and Paul?

Paul Egerman – Businessman/Software Entrepreneur

You're breaking up a little bit Gayle but I think I heard you say you agree with me 100% is that right?

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

Now Paul you know that wouldn't happen.

Paul Egerman – Businessman/Software Entrepreneur

Okay, again you're breaking up you said as usual, yes.

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

Can you hear me –

Paul Egerman – Businessman/Software Entrepreneur

No, but I heard you say that the examples are important to make sure you understand how that's working.

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

Yeah, I think the examples are absolutely key.

Paul Egerman – Businessman/Software Entrepreneur

Yes.

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

That people need to understand how complex this is and how difficult it is. To me the pilot will be essential as well that we can really –

Paul Egerman – Businessman/Software Entrepreneur

Okay.

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

Shake out through that.

Paul Egerman – Businessman/Software Entrepreneur

Okay so that's helpful. Now we've got a few more minutes, I want to see if I can briefly go through one other issue.

John Houston, JD – Vice President – University of Pittsburgh Medical Center – NCVHS

Hey Paul this is John Houston, I apologize I came on really late.

Paul Egerman – Businessman/Software Entrepreneur

Okay welcome John good to have you.

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

Hi John.

John Houston, JD – Vice President – University of Pittsburgh Medical Center – NCVHS

Hi, I just – the reason why I'm cutting in is I know I made some comments back to your presentation and then I wasn't able to attend earlier, were there any questions for me of anything that I had submitted that I maybe can clarify?

Paul Egerman – Businessman/Software Entrepreneur

No, because what we did – I appreciate your comments, but we actually didn't review any of that material in this call, we're trying to sort of –

John Houston, JD – Vice President – University of Pittsburgh Medical Center – NCVHS

Okay.

Paul Egerman – Businessman/Software Entrepreneur

Move onto some new material and we're accepting your comments on what we sent out and to be clear to everybody so it doesn't sound like we're having like some inside conversation between John and Deven, and me, you know, we had sent out to everybody the slides that sort of like summarized everything and summarized the hearing and John wrote back a fair number of comments, very appropriate on a few of the slides and I want to encourage people, we're going to be sending out probably before December 2nd another version of all – encourage people to go through that carefully because John's comments were excellent and everybody has put a lot of work into this thing and we want to make sure that we write it up in a way that everyone agrees with.

John Houston, JD – Vice President – University of Pittsburgh Medical Center – NCVHS

Great.

Paul Egerman – Businessman/Software Entrepreneur

So, the last dangling issue, I want to see if we can make a little bit of progress on before we do public comment is the HITECH, the law, that removed this exclusion for TPO – exemption, had this comment about through an EHR, it said, you know, disclosures through an EHR would be exempt and then during our hearing and our public feedback and the comments we got, we got comments from a number of players that said, well, you know, like I'm a retail pharmacy and that's not an EHR or I'm a commercial laboratory and that's not an EHR so none of this stuff should apply.

And so one place where we could also still make some – be helpful I think to HHS would be to make a comment about what that means when the law says through an EHR, what we think HHS should interpret it and the NPRM basically took a, tell me if I've got this right Deven, a broad statement that basically said, you know, if it's PHI some place it really is to be covered and so I wanted to – like as a straw recommendation sort of suggest that we respond to this and my suggestion is that we respond in the way of saying, you know, the NPRM got that part right that there is a difference between an EMR and an EHR and an EHR just means electronic and is part of the health record, so that means if it's in – some information at a retail pharmacy or a commercial lab even though it's not a complete medical record system that doesn't matter, all these rules about disclosures and doing investigations and audit trails should apply to all of that stuff.

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

This is Deven, I was going to initially suggest that I didn't think we needed to touch this because I think we've laid out an initial implementation path for HHS that in fact does focus on EHRs as defined in HITECH which are records that a clinician consults and uses, but we've said pilot these in provider EHRs at least to start and then you can make a determination about how to expand it and really leave it to OCR to figure out where it goes from there recognizing that they – you know, that their responsibilities for HIPAA are to have a set of privacy rules that apply to a range of covered entities not just those that are specifically identified in HITECH here.

I wasn't sure we needed to opine on that at all given that we had already laid out a staged approach for doing this and laid out the initial stage, it feels to me like a step – we don't have to – we don't have to go there, but, you know, I recognize that, you know, there may be some value given that we got testimony to this, to saying something about it, but there is actually a definition of EHR in the statute that references, you know, it's used by clinicians.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

This is Leslie, I did send around that comment that there are two subsections of the statute and the first one –

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

Yes.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

Extends TPO, accounting for disclosures through an EHR and the second one does not contain the through an EHR language but requires the accounting for three years only.

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

Yeah, so it just changes accounting provisions in terms of the timeframe, doesn't reference just EHR, but we don't really have recommendations with respect to the timeframe.

Paul Egerman – Businessman/Software Entrepreneur

So, certainly one thing we could do would be to say nothing on this for now and I'm not sure if I understand what you're saying Deven are we able to say something or is it – I mean another way you could look at it is –

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

Oh, we can –

Paul Egerman – Businessman/Software Entrepreneur

Through an EHR could mean something that came from the EHR is going to an EHR also.

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

Yeah we could –

Paul Egerman – Businessman/Software Entrepreneur

It doesn't say in an EHR.

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

Although that's certainly not – that certainly wasn't the set of recommendations that we've landed on that it would just be EHR to EHR. I just really felt like – I mean, I think it's good to do a gut check on whether we think we've got this covered, but I think we are essentially acknowledging that in fact there is this HITECH provision that the law requires to be implemented, we've laid out recommendations for a pathway, an initial step and a pathway to implementation but that it's ultimately the job of the Office for Civil Rights to sort of figure out where it goes from there.

Leslie P. Francis, JD, PhD – University of Utah School of Medicine – National Committee on Vital & Health Statistics

I like that.

Paul Egerman – Businessman/Software Entrepreneur

Okay any other comments on that? So, hearing no comments I think we're at the end of our slide deck are there any other issues on this topic, anything on accounting of disclosures anyone wants to discuss? So, Deven should we just open ourselves to public comment and wrap it up?

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

I think that's good in the meantime we'll let folks know – we'll be working on the language for the follow the data or focus on the data approach and some examples and get that around to folks and that's what we'll spend time on, on our December 2nd call.

Paul Egerman – Businessman/Software Entrepreneur

Sounds great.

Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator

Okay.

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

We're ready Michelle.

Public Comment

Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator

Operator can you please open the lines?

Ashley Griffin – Management Assistant – 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.

Paul Egerman – Businessman/Software Entrepreneur

So, I'm not hearing any comments.

Ashley Griffin – Management Assistant – Altarum Institute

We're waiting on one moment –

Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator

The operator is –

Ashley Griffin – Management Assistant – Altarum Institute

For someone who might be calling in.

Paul Egerman – Businessman/Software Entrepreneur

Okay.

Ashley Griffin – Management Assistant – Altarum Institute

It looks like we have no public comments for the line.

Paul Egerman – Businessman/Software Entrepreneur

Great, well, thank you very much –

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

All right.

Paul Egerman – Businessman/Software Entrepreneur

For an interesting discussion and look forward to our next meeting which hopefully will wrap it all up on December 2nd.

Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator

Thank you Paul.

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

Thanks everybody.

Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group

Thanks, bye-bye.

Judy Faulkner, MS – Founder & Chief Executive Officer – EPIC Systems Corporation

Thank you.

Gayle B. Harrell, MA – Florida State Representative – Florida State Legislature

Bye.

Public Comment Received During the Meeting

1. regardless of TPO, a disclosure is any release of information outside of the covered entity, I think it's important to keep this in mind.