



Joint Health IT Policy and Standards Committee Application Programming Interface (API) Task Force

Final Transcript
April 21, 2016

Presentation

Operator

All lines are now bridged.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Thank you, good morning everyone. This is Michelle Consolazio with the Office of the National Coordinator. This is a meeting of the Joint Health IT Policy and Health IT Standards Committees, API Task Force I should say, this is a public call and there will be time for public comment at the end of today's call. As a reminder, please state your name before speaking as this meeting is being transcribed and recorded. I'll now take roll. Josh Mandel?

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

I'm here, hi Michelle.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Hi, Josh. Meg Marshall?

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Good morning, I'm here.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Hi, Meg. Aaron Miri?

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

I'm here, good morning.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Hi, Aaron and Aaron Seib?

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Present.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Hello. David Yak?

David Yakimischak, MBA – Senior Vice President & Chief Quality Officer – Surescripts

David is here, hi.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Hi, David. Drew Schiller? Ivor Horn. Leslie Kelly Hall? Leslie is here.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Here, I'm here.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Linda Sanches? Hi, Leslie.

Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Department of Health & Human Services

Linda is here.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Hi, Linda.

Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Department of Health & Human Services

Hi.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Rajiv Kumar? Richard Loomis?

Richard Loomis, MD, CPC – Senior Medical Director & Informatics Physician – Practice Fusion

Good morning.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Hi, Richard. Robert Jarrin told me he was not available and from ONC do we have Rose-Marie?

Rose-Marie Nsahlai – Office of the Chief Privacy Officer – Office of the National Coordinator for Health Information Technology

I'm here, hi, Michelle.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Hi, Rose-Marie. Is anyone else from ONC on the line? Okay, with that I'll turn it over to Meg and Josh.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Excellent, thanks, Michelle. Thanks all for joining and just I think the exciting thing that happened this week was that Meg and I presented our draft recommendations to a Joint meeting of the Health IT Standards Committee and Policy Committee in DC where we went through the updated versions of the slides that we discussed on our last call. So, we were able to go in and adjust them to address many of the issues that came up in our last call and overall I think we were really pleased with how it went.

We got some detailed notes from the meeting including questions that members of those committees asked after the fact and a few sort of areas for us to address but overall it seemed like the framework that we proposed was really quite well received. I think there are areas where we want to clarify what was in scope and what was out of scope but overall there weren't really a dramatic number of red flags or large new areas that it looked like we would need to address. So, I was pretty pleased with that.

Let me just turn over to Meg for sort of her take on how things went and I think our goal for this meeting is to talk about next steps from here, discuss a little bit of the concrete feedback that we heard in DC and give you guys a plan for how we want to continue making final tweaks to our set of recommendations and what will ultimately be the work product of this Task Force which is a written report.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Okay, thanks, Josh. Thanks, I agree I think that the feedback that we received was really well aligned with a lot of the work that the Task Force has done. What was really nice is that a lot of the questions that we got, I think especially right after our presentation and so when the Q&A first started it was really indicative of a lot of the same questions that the Task Force had asked during our first few meetings and I think they were very pleased with how we responded that these were areas that we looked into and perhaps could clarify and highlight a little bit better in our report our thought process and how we came to the decisions that we did.

So, I captured a few of the comments and so Josh at this point as far as next steps go we want to make sure that we have a chance to talk through all of these to see what changes we need to make. We're really gearing toward the report, which is what 26 pages now, the one that we had been developing through the Google Doc as being our...what we actually present to the committee, the final artifact.

We struggled a bit trying to list the recommendations in a presentation format and I think it worked fine for a discussion perspective just from a...to provide somewhat of a summary and we could talk around it but I think we're going to be really challenged to actually create a second artifact that is a slide presentation set that is part of our final report out.

So, in order to make that our final...what we're all comfortable with is that final artifact what we discussed today and how we plan on going back through the document and tweaking it...I think that there are some changes that we need to make to reflect a little bit better our scope.

We got a lot of questions around read versus write access and once we explained it and clarified that we had self-limited our scope to really what was in the 2015 CEHRT Rule, which was the write only or I'm sorry the read only and not the write, I think that made sense but we did get some questions pertaining to, you know, well what happens once the App has the ability to update. So, that was clearly outside of our scope and we'll just want to make sure that we handle that a little bit better.

We also got a lot of feedback, there needs to be a better way to explain this oversight mechanism or the complexity of the oversight mechanism, HIPAA versus FTC, versus FDA, you know, versus nothing. So, I'm going to go back through and rework the oversight section a little bit so that those challenges are articulated a little bit better upfront in the document rather than...we do I think a really good job of explaining how that complexity of oversight effects authorization for example or auditing, but there was just really an overarching need to put that up front in the beginning of the document perhaps around the scoping.

And to that end, I'll make one comment there, one specific comment that we received and then I'll just jump into some of the other ones that we received as well.

So, we actually got a pretty good question which was, if this is so complex why isn't the Task Force just making a recommendation that all Apps be treated as Business Associates? That this is just a requirement that if you're an App connecting to this API that we mandate a BAA. So, I want to spend a little bit of time, you know, addressing that and talking through that and making sure that we're all okay with how we're responding to it. But that's just indicative of, you know, some of the, you know, larger,

broader issues that we perhaps struggled with earlier on that we're going to need to make sure it just makes sense to the folks who are reading it for the first time.

So, some of the other comments that we got, a very specific one, Rich Elmore had asked that we look at the identity proofing section and we make sure that we clearly address inconsistency in standards and Josh reacted to that very well during the oral presentation but we'll probably just want to make sure that the report articulates that a little bit better.

Rich also had a question around OCR's recent guidance and the "technical" feasibility. So, somehow or another incorporating that concept of allowing a technical feasibility understanding as far as what the expectations are of the API developer and the App developer. And I think that that's covered fairly well within the CEHRT Rule itself and we talked about it somewhat and the types of organizations and meeting the specifications, but again, just, you know, these are all great questions and just points that we want to make sure that we take back for clarity and feedback.

We did get some questions from Gayle, the State Legislator in Florida, focusing on bad actors, also started introducing somewhat of this need for educational tools that don't just define the oversight endorsement but also articulate a little bit more of the liability. So, we'll have to look and make sure, again, that this oversight section and some of our responses around the consumer protection and consumer education that we're really outlining some clear boundaries as far as what we think should be included and not included specific to that liability question.

Gayle also asked about what level of proof is needed for data blocking to disable or suspend an App. So, we're going to go through and make sure that is clear. Some thoughts around how the bad actors should be punished as well as what elements of security are necessary and she used the example, if an App developer has data hacked or data held for example for ransom.

Paul Egerman had some comments around when PHI is first stored in a server or a cloud first and then potentially what can happen there. He also, oh, well, I skipped right over Paul Tang. Let me go back and introduce a little bit...Paul Tang talked about this concept of privacy literacy, which is akin to health literacy essentially, so it's the concept that the consumer is aware of the policies of the App and has that meaningful informed consent to make the decision.

So, what elements or how do we ensure that his consumer truly has that level of awareness around the policies and throughout our document, throughout our recommendations we do keep going back to well it's the consumer, it's the consumer's responsibility so just making sure that we clearly address that, you know, what that threshold is.

Paul also mentioned that as part of this to be able to explain to a consumer what happens when this App goes away or when the company goes under that now you have this App that they've been interacting with that no longer is, you know, no longer trustworthy I guess is the point. So, I apologize for this little leeway, but Paul Egerman picked up on Paul Tang's privacy literacy voice and really wanted us to talk...make sure that we were talking about what's reasonable, what's trustworthy, the consumer doesn't want to hear that it's his fault. So, if something bad happens down the road that it's his fault that he didn't catch it because he didn't read a privacy notice. So, he also was the one that made the suggestion to simplify the oversight framework as far as, you know, rather than navigating this incredibly complex one just making a recommendation that there's an opportunity to harmonize it or to simplify it somehow.

We heard a comment back to the privacy literacy from consumers is it a mistake to assume that the consumers are savvy enough and the quote was "we know that we have patients who are accessing portals but the number of them statistically who are actually using the portals is a fraction of who is

actually accessing.” So, this whole, you know, are we making too many assumptions that the consumer is savvy enough to make these decisions.

We were reminded that ONC has the powers of coordination, that’s in their title, of health information technology, so to take advantage of that in our recommendations to leverage the roles that federal agencies such as DoD, VA and CMS play as holders of government data as well as those agencies who will likely be verifying and certifying these Apps as well.

So, to really potentially be a little bit more assertive in our wording as far as what we have, you know, ONC should leverage their coordination powers to reach out to agencies that maybe are beyond our advisory powers as a FACA to ONC but nonetheless it’s still very much within the powers of ONC to reach out to those agencies and coordinate, so a very nice reminder there and to go back through our documents.

Josh and I had talked about what this looks like and we had been very concerned that we were making recommendations for specific agencies and we weren’t sure is this OCR, is this OIG, but I think that there’s a way that we can articulate ONC needs to, you know, leveraging their coordination powers will know who those right agencies are, we don’t need to take that on as a Task Force and maybe not designating the specific ones if we don’t need to know that but certainly, you know, in a broader scale perspective to continue to pull in the agencies as we think they’re needed.

We did hear a little bit about, from Donna Cryer, the concept of crowdsourcing experiences and my take away from that was kind of interesting, we hadn’t really talked about it a whole lot, but the consumer’s power to react and to write an App, and to share information about that App with others, and the note that I wrote next to that was, Yelp, you know, this sounds a little bit like, you know, potentially ending up as a recommendation that there is some place for a consumer to go to share their experiences number one, but number two, to also file a formal complaint.

So, rather than, again, back to the terribly complicated process, rather than trying to explain it all to a consumer in a way that makes sense, maybe there’s just one place that says “hey, if you have a problem with an App, you know, you don’t have to know whether this is a HIPAA covered App or whether, you know, it’s an FTC covered App here’s one place that you can go and we’re going to help you figure it out, we’re going to help, you know, manage and mitigate the complaint that you have that’s in a centralized location.

Then they also reminded us to leverage the power of the providers through the portal and that we can make some stronger statements around, you know, what the providers should do or could do to help educate and manage some of the consumer literacy issues through the portal itself.

And then the final one we heard several, I think the last few comments kind of all wrapped around this, read versus write, and a few questions were concerns around what happens when we get to that write aspect and I think ultimately what we’re seeing is as we define our scope, as what it was, that the natural byproduct of that is that is that we need to make some recommendations that say, you know, ONC should probably have a second Task Force at some point in time that talks about...that really explores this when it’s necessary, so maybe not, you know, right away, but tied in with advancements in the certification process or certainly advancements in the market and expectations, that there could be another Task Force that addresses the issues that we didn’t take on including the update access back to the EHR.

So, that was a little bit more time than I planned on spending on that but I wanted to be very thorough. If you didn’t get a chance to listen to the presentation and if you have a spare hour with nothing else to do the comments...our portion of the presentation really just ran a little bit over an hour and it would

probably be pretty helpful for you to listen to it as well as, again, if you just have a few minutes, but ultimately those were the main take aways.

And then Josh I know had a few conversations after our presentation where he received some additional feedback and I'll ask him to share that with you as well.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Sure.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Hey, Josh, before jump into that I wanted to try and get a clarification from Meg. This is Aaron Seib.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Go ahead.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Okay, Meg, I lost the thread, you were explaining someone made a recommendation that we coordinate with the...recommend to the ONC that they coordinate the activities of agencies that have PHI, could you restate that?

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Sure.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Or cast that so I could understand it better?

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Yeah, sorry, if I made that a confusing remark, but, it was Arien Malec who reminded us, because we struggled a little bit...a lot of our recommendations start with ONC should encourage OCR or ONC should work with the appropriate agencies or, you know, we recognized that a lot of this is outside of the certification authority, right, to get to a provider or to get to, you know, a HIPAA breach for example isn't necessarily ONC authority but what Arien did was remind us that well actually it really is within their scope as the National Coordinator of Health Information Technology they have the ability to actually make these recommendations and to work with the relevant agencies, so to really take advantage of their coordination powers.

But secondly, there are several government agencies that are holders of government data so the DoD, the VA, CMS and to leverage ONC's coordination powers to help with the agencies who are the actual data holders and who will be more actively...that we should view as providers as well. So, we have a little bit of a tighter relationship if you will to leverage in our recommendations through ONC. And I may have just muddled that even further.

I don't know Josh if you have...if you are able to...or Leslie certainly if you're on to clarify that remark a little bit, but it was really just a reminder that we have federal agencies who are holders of data and we can make recommendations that ONC coordinate some activities from them as well.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

I got it. I did get it. Thank you, Meg.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Yes.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Sorry, Josh, go ahead.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Oh, no, that's great and thank you Meg for doing such a great summary the feedback that we heard. I was just going to describe briefly a couple of additional pieces of feedback I heard outside of the official committee process.

And so one was a set of comments about different architectures that a hospital or a hospital system might use internally to provide support for these APIs and one that we heard was that VA has been investing in a patient portal that VA will offer to beneficiaries and basically make data available in this portal which has a strong degree of patient control to it and then build the API on top of that portal and that sounds like a perfectly good and strong direction to me as long as that portal actually has the relevant data in it and supports these APIs and offers HIPAA protection to the data before they flow out into Apps. That all sounded like a very strong direction for me.

As far as I think we're concerned it is sort of an implementation detail, any given organization might choose to build an architecture like that within their own walls or they might choose to rely exclusively on a vendor to give them these services and it doesn't matter too much as long as whatever they offer has the right kinds of properties.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Hey, Josh, this is Les...

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yes?

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

But they can't do it exclusively because the patient still has the right to choose the App, have the App of their choice connected to the API. So, there will be some that are coming from the provider that will be in their App Store or recommendations, or endorsed, or covered under HIPAA, but that can't be the only way.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

I think we're saying two different things Leslie.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Okay.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

All I'm saying is that a provider organization needs to make the data available to a patient and let the patient run Apps on top of it. But in terms of how they do that whether they rely on their EHR vendor to give them that functionality out of the box or whether they build their own internal portal where they load all the data to make it available it doesn't matter at all as long as their patients have a way to see the right data and share those data with Apps downstream, the rest is just, you know, a business decision internally.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Right and they get to choose the App then it doesn't matter.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yeah, so I think that we're on the same page there. The other comment that I heard is one that actually comes back to the discussion we had on our last phone call where, you know, I was trying to go into too much detail on this issue of endorsements and the lack of endorsements and, you know, what can a provider do to show patients warnings if the endorsements are missing and this and that, and the feedback that I got in this group on our last call was, you know, maybe it's better just not to say any of

that stuff just leave it at saying we can have a market where different organizations can publish these endorsements and people can use them however they want as long as we don't prevent patients from running the App of their choice.

And so in our slides I really did streamline it to that level. I included an example picture, as I think Aaron suggested we might do, but I didn't go into a lot of detail about, you know, what kinds of degrees of control providers might build on top of that system.

And afterwards I actually got a comment saying, you know, Josh it might be good for you to describe, to make people more comfortable on the provider's side, some of the kinds of things they could do to control this ecosystem, not control in the sense of preventing patients from running Apps of their choice but control in the sense of making sure to show patients appropriate warning language and putting things in context in clear ways, in other words setting the expectation that provider organizations are perfectly free to display those kinds of warning language and signal to patients, you know, what they know or don't know about these Apps.

So, I got feedback actually that we might want to swing the pendulum a little bit the other way in terms of just how much color we had not changing our recommendations but changing a little bit how we describe them and providing some examples so that people understand what they imply.

David Yakimischak, MBA – Senior Vice President & Chief Quality Officer – Surescripts

Hey, Josh?

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yeah, please?

David Yakimischak, MBA – Senior Vice President & Chief Quality Officer – Surescripts

Hey, it's Yak, hi, thanks for that. Did the question or the issue around bias based on commercial or financial relationships come up? I was thinking about this the other day was, is there a need to require that there be a disclosure of conflict or anything like that just like when you're a speaker at a conference, you know, you have to disclose any conflicts up front.

When it comes to the provider's role in these endorsements and/or Yelps or whatever it is that if they've got a commercial interest should we look at whether there is a requirement for them to disclose that? Did that come up or has it?

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

So, it's not a subject that came up directly. I'm hesitant for us to make special new rules about this specifically in the API and sort of App sphere. I mean, these would seem to be like important issues that come up any time a doctor recommends any kind of product or drug, or referral to a patient. I mean, it's a big and deep set of issues. I don't know how much we could say that would be like reasonably light touch and helpful without...

David Yakimischak, MBA – Senior Vice President & Chief Quality Officer – Surescripts

Well, that's the slippery slope we talked about, right?

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yeah, exactly. So, I don't know that we should reach out to try to make those recommendations it worries me a little bit.

David Yakimischak, MBA – Senior Vice President & Chief Quality Officer – Surescripts

Yeah...

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

You know as a...

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

This is Leslie...

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

This is Aaron Miri from a provider perspective it may be worthwhile though to maybe footnote that and say, we may want to investigate further because I can tell you that's a very good question because everything that we do we always ask the question, does this violate Stark, does this violate Sunshine, I mean, all these, you know, standard questions that is a plausible concern because I can see some hospitals erring on the side of caution because there is not really any guidance out there around that and just simply saying "nope we're not going to do it" because of fear.

So, that may be a way to encourage the ecosystem by at least footnoting to say "hey, should there be other investigations" but is that in the scope of this API consideration.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yeah, I think that's a fair point as sort of a side note rather than a recommendation per se.

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

Right, you've got it.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yeah.

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

You've got it.

David Yakimischak, MBA – Senior Vice President & Chief Quality Officer – Surescripts

Well, the other thing then Josh related to that is if this is already a big issue and it's already covered in other ways then maybe we can reference that but I'm not sure that it is covered in other ways.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yeah, no my...

David Yakimischak, MBA – Senior Vice President & Chief Quality Officer – Surescripts

Like publically disclosures.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

My point was actually not that it's a solved problem and covered elsewhere. My claim was that it's a big problem and probably not covered elsewhere...

David Yakimischak, MBA – Senior Vice President & Chief Quality Officer – Surescripts

Oh, okay, okay.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

And for us to try to cover it very deeply in this one is...

David Yakimischak, MBA – Senior Vice President & Chief Quality Officer – Surescripts

Right, right, right, yeah.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Would probably be naïve.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Josh?

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yeah, no, I...

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

I think you made a really great point when you guys presented yesterday on the role of the provider to provide education if the patient is going through the portal process, the patient portal process to actually link their API and that is the opportunity where we can have rich education around this is what you're about to do, the App is yours, the choice is yours, this is how it's protected, this is where you go if there is a problem and some things you might want to consider as you review the privacy terms and conditions of that App are, is there a commercial interest, is there, you know, we could ask that OCR or ONC actually...they've done the notice of privacy practices, but expand on that a little bit to handle the consumer beware aspects of it so that we can educate and offer this up to the industry as a great way to mitigate some of these concerns at least on the portal entry of the patient.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yeah, no, I think that's a fine point. So...

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

So, let me ask a question, this is Aaron Miri, again, from a provider perspective since it seems to be that a lot of the questions were along that continuum. Did any question come up about there is sort of a unspoken practice of some of the reasons why HIEs and others were unsuccessful in the past was because there was local competition of others and in order to dissuade a patient from easily being able to go across health systems and say a service area that they wouldn't...health systems would not hook up to a local HIE so that data kind of didn't flow well.

Was there any concern or question about, from an API perspective, if I suddenly give that data to the patient that the provider community may start trying to do a buyer beware like, hey don't take your data to x, y, z location or to a non-authorized physician? I'm just curious if any of that kind of conversation came up because that is a very common practice right now.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yeah, I don't think that we had comments along those lines unless there is something that I'm forgetting. And, you know, frankly, if the notion is that patients can make the decision to take the data wherever they want, I mean, the implications...

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

...absolutely.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Is that, yes, it could be...

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

I...

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

The hospital across town or a second opinion service, I think, I mean that much was clear from the way we were describing the problem. Frankly, we only had about 30 minutes for open discussion and a lot of topics to cover. So, you know, just because a topic didn't come up it's hardly evidence that nobody will think it's important sometime in the next month and want to raise it.

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

Okay, all right, I just wanted to ask, thank you.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

No, I think...this is Aaron Seib, I think that's a pretty poignant question to think about, you know, as far as guidance. You know this is the notion...and I think there is existing law that would address that but what we can do is ask for clarification on what laws would apply in the effect that a provider use scare tactics to prevent a consumer from choosing to share their data with another provider.

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

Influence tactics, influence...

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Yeah, thank you, thank you.

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

Influence tactics.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Influential tactics.

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

Right.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

There's nothing you can do about that, but most organizations will take the approach as "I'm trustworthy" and by implication they aren't, but I don't think that's within our scope myself. It didn't really come up.

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

Okay. I just...I find it interesting that they raised questions about BAAs for everybody...it almost seemed like the fear...and what's interesting is we actually spoke about that several calls ago and I believe we weighed in about that, you know, it just seems like there was a concern or worry about trust and where things are going and that sort of thing and that is very much the provider, as I've always said, you know, err on the side of caution mentality.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Right. However, you know, there was bristling around the room when that suggestion came through and lots of head shaking of "no." But, I do believe that there was still some misunderstanding which to Josh and Meg's point going back and clarifying things a little bit would be helpful.

But this idea...the undertone that somehow patients don't know enough and can't learn enough to be...to understand this responsibly it just hasn't proven. I mean, we're 43 years in the business now of providing information to patients and they're making huge complex decisions and they've used it over a billion and a half times. So, we know that when you educate someone in terms they understand and the language they understand that they learn.

And the other area that I have concern in is the idea that because someone's accessed the portal and never used it again somehow they don't value it. I think the question should be flipped. The portal might not be providing value. So, I have a savings account and a checking account. The savings account I prefer not to touch but I like that it is there and when I need it I can go. And somewhat that's the case if people are involved in an episode of care and not a chronic condition they might be using that portal only once until the next episode. So, I don't think we can translate use to actual value to use.

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

That's a really good point; this is Aaron Miri, that's a very good point.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

So, a few of the other issues that we wanted to talk about today on this call were really focused on process in terms of getting to the final set of recommendations and final report for next month. And what we wanted to do was run through a proposed plan that Meg and I have been talking about and make sure that this seems like a reasonable way to proceed. And maybe the easiest way to do it is to work backwards a little bit from the final product.

And we were discussing, Meg and I were discussing, a little bit of the challenges of trying to condense the material from a 30 page report into a set of 30 slides with bullet points on them and it seems like there is always this tradeoff between simply omitting detail or trying to cram far too much information into a slide to the point where you might as well be reading a page of text.

And Meg and I both had the intuition that it might be easier to simply deliver a good old fashioned written report to the committees with enough advance lead for them to have a chance to read through it and provide comments and then really use our in person committee time to talk through comments in detail rather than trying to read through a series of slides at rapid fire and burning through all of our discussion time.

So, I know that's a little bit heretical there's a bit of a PowerPoint culture in the way that the Standards Committee and Policy Committee typically operate but we thought that if we had support from this group that what we would try to do was to sort of push forward with that model, have an old fashioned written report and then in person discussion where we actually get to talk about the details.

So, let me just first of all see, as we're working backwards from where we want to get to, does that make sense? Does that resonate with folks here or are there people who think that having a slide deck is really a critical part of what we would need to deliver?

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

This is Aaron Miri...

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Hey, Josh, this is Michelle...

Aaron Miri, MBA, PMP, CHCIO – Chief Information Officer – Walnut Hill Medical Center

I think it's a great plan.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Michelle, please?

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Sorry, I just wanted to say that there have been a few groups who have done reports in the past so like the S&I Task Force they did a report because at the end of the day the final results from the work is a transmittal letter so a report is actually better because you get all of the background details that you don't necessarily get in a PowerPoint. So, if you have a report and they have plenty of time to read it before the meeting it probably is better.

The S&I Task Force, when they did that, they did have slides, but they were just very high-level so people had something to look at. So, we can figure out exactly what we show them but I think a report is a great way to go.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Michelle, this is Les and I think the only thing is that when people are listening outside on the webinar it helps to have some slides to frame it and even if we did very high-level and put the web link in the slides as a footnote to get to the document I think that could be very helpful for those who are listening in.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Yeah, I think we'll have to do something in PowerPoint but we can figure out what that is.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Okay.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

So, this is Aaron, my only question would be how much lead time can we give the people on the committee to read whatever we produce because they all have full-time jobs and everything else. We've got to give them time.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yeah and my goal would be...

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

This is Meg...

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

To give them...oops, go ahead Meg.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

I think we're going to say the same thing. We were going to shoot for next Tuesday that we have a PDF of the document in a draft form and ready to share Tuesday.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

And then in the meeting that you have next is in May?

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Yes.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Or when do they...when do you follow up?

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

May 17th.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

May 17th, yes.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

May 17th, oh, that's perfect, yes.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

And I think...Michelle we were also hoping that we could make that somehow part of the public process as well so that the remaining work, Task Force times that we have we could spend receiving or discussing feedback that we have received so not just waiting until our final recommendation or report out but to encourage people to send us questions or comments so that we can work through them and really try to make that May 17th a final product.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

We can make anything happen Meg.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Love to hear that. Okay, so that would be our plan then is when the PDF is available for the Joint Committees to review that we would somehow or another ask Michelle to help us magically let it be available for public comment and feedback as well.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

That's awesome. I love that idea.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Good, so let's talk a little bit about how we then work up to that point in terms of deadlines and little tasks that we need to accomplish between now and then. Meg do you want to give us, you know, a quick rundown on, you know, what the steps look like in terms of us freezing the document and cutting off a PDF and then describe a little bit about how folks in the Task Force would be able to share their feedback directly with you and me so that we could incorporate that feedback over the next week or so?

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Yeah, so my calendar shows next Tuesday as our next Task Force meeting so that's why we're gearing toward Tuesday to have that PDF available. So, between now and then Josh and I will be cleaning up the Google Doc, so I think we've froze it a couple of weeks ago, but to really, you know, flush out some of the text and organize it and as I mentioned earlier pulling up some of the oversight pieces to the front of the report so that it's not buried and it makes a lot more sense to lead with it.

So, not really anything new, incorporating some of the suggestions that we received yesterday that we talked about, reorganizing, reformatting a little bit and then making it available for the Task Force call next Tuesday so we can have it up on screen, everyone can have it, we can walk through it and see if there are any questions but that this would be our launch.

So, essentially, what I'm telling everyone is that Josh and I will take on the brunt of the work and then you can have your weekend with no homework and then just expect to have it on Tuesday or maybe Monday evening, or Sunday or Monday evening to give you a little bit of time to review it so that we could, as a Task Force, talk about it Tuesday and that would be sort of our launch of this PDF that we could get feedback on. Is that what you were looking for Josh as far as next steps?

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yeah, no that's perfect.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Okay.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

So, Meg, this is Les, does that mean that the document that we received today is the one you're starting from?

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

What did we receive today? I don't have my computer up?

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Wasn't there a summary document that was attached to our e-mail? I haven't opened it.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Oh, I think that was...

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Document from...

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

From the NIST.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yeah, from our last meeting.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Yeah.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Okay. Oh, that was a summary, yeah, could we get the most latest or is it just to go to the Google Docs and the link?

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yeah, it's still in the Google Doc and we'll be finalizing everything there. When we say that we've frozen it what that means is that you can't make edits directly anymore to it but Meg and I still have...

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Right.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Access and that's still the up to the minute place to look.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Yeah, okay, so...yeah, I'd just like to print it out and study it over the weekend so that by Tuesday I'm informed that's all.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Yeah.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

So...

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

If you'd like Leslie, I know...I appreciate your timing and trying to get it done, if you could just give us...I'm looking at my schedule, maybe just a couple of days to get some of the high-level reformatting changes made...

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Okay.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

And some of the recommendations that we got yesterday that way I think it will be a cleaner copy for you to take a look at. You won't have as much new information.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Okay.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

If you could give us until maybe Sunday evening with it...

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Okay.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Does that sound reasonable?

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Yes.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Okay, perfect.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Thanks.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Does that timing work out with most folks? I know that that's a shorter turnaround but we're not making huge...we're not really making any new changes to it we're just formatting a document into a final format and then if we get it to you Sunday afternoon for feedback Tuesday during our meeting, does that create any problems for anyone?

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

No.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Okay, perfect and...go ahead?

David Yakimischak, MBA – Senior Vice President & Chief Quality Officer – Surescripts

No, no problem.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Okay. I think from the agenda for today's call I think that covers everything that we wanted to cover. Are there any new questions or new topics, or any other suggestions maybe we'll just kind of open it up for discussion?

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Meg, this is Aaron Seib, I had one suggestion that the members of the Task Force might send you any sort of dangling jag questions that we might have just to make sure we've cleaned up and captured everything that people have thought about in the past.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Yes, perfect that would be very helpful.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Yeah, just e-mail to Meg and me is a fine way to do it.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Great, thank you.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Do we need to discuss any of the feedback we got yesterday at all further? The one that makes me the most nervous is changing everything to HIPAA requirement and a BAA.

David Yakimischak, MBA – Senior Vice President & Chief Quality Officer – Surescripts

Yeah, that's...

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Yeah, so I think...I'm going to propose...Josh and I talked about that actually and I think ultimately what that boils down to is a proposal or a recommendation that just says "hey, this is complicated" and, you know, as much as ONC could coordinate and harmonize this we would encourage them to do so, but we recognize that a lot of this would take congressional action.

So, I think we can make a recommendation that just says, hey, this...our ideal situation would be a very simplified process, anything that ONC could do to make that happen or to advocate for it we would highly encourage it and recommend that they do that and then just go right into, however, it is a complicated process that we're currently navigating and here are our thoughts around additional guidance within that framework. Does that sound like a fair reaction?

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Well, and I guess if we wanted to simply it we could say that none of them will ever be under BAA. I mean, both are simple. So, I don't want to end up with simple always means constraint.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Yeah and Meg, I might...this is Aaron Seib, I'm echoing what my friend Leslie is saying, and, you know, rather than saying, hey, this is complex, I want to make sure that we say this is complex for a reason, right? It's not just like some...that there is a difference between consumer controlled Apps and HIPAA covered entities and how they share data.

So, I hate the thought that...and I know...I mean, I think I understand who made the recommendation and I can see what he's saying, but there are reasons why the applicable oversight is varied and, you know, those are reasons that make sense for patient's rights and there are reasons that make sense for protecting providers and covered entities. So, I don't like the, you know, oh, this could be a lot easier if we just have one, that doesn't make sense to me. Sorry, soapbox.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

No, I agree and I think...I'm just...so I'm trying to think...keep a close eye on how I wordsmith it and articulate that and then it might just take a few iterations between the group of saying, you know, we really need to add some language here or use a different word there, but I think that that's really been the theme of how the Task Force has been orienting this entire time that I'm comfortable, but I think that that's a general agreement and general consensus the challenge is just going to be articulating it in a way that everyone is comfortable with.

So, maybe let's just...I'll make sure that I highlight that and flag it and then draw your attention to it to make sure that we spend a little bit more time making sure that it is concise and says exactly what we want it to.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Thank you, so much, Meg, I wasn't making a criticism, I hope it didn't come across that way it's just...

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Oh, no, no, no not at all, I appreciate that and my brain is already working on the right way to...or on a proposal for it.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Yes, yes.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

So, that's very helpful.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Thanks, guys.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

You know one thing that I will throw out there about...we kind of got into the weeds a little bit so far on the call around the provider's role to educate folks and so forth, and, you know, to the degree that our recommendation can help OCR or ONC, or somebody to provide reusable content that providers may insert I think we would, you know, avoid some of the unintended consequences of letting them kind of roll their own or at least give them something to baseline from. We've seen this and the OCR has done it before with regard to HIV patients and so forth. So, they have the content it is just maybe sharing it in an efficient way that provider organizations who have consumer-facing APIs can reuse it would be helpful.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

I like that point. Do you have a link to that education that you mentioned, the HIV education, that we could refer back to?

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Yeah.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Would you mind sharing that?

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

No, I'll find it and shoot you the link.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Perfect, thank you.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Oh, I have a question. Did the slides include that dashboard that you had put forward Josh as an example? They did, didn't they?

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

So, they included sort of a screenshot of what an App approval screen might look like.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Okay.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Is that the one that you mean?

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Okay, but nothing on the...we didn't have anything on the education or the warning?

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Well, so, yeah, the approval screen is where something like a warning would go when you're provider is asking you "are you sure you want to approve this App."

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Right.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

So, that was sort of the template where that would fit.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Okay. I'm going to noodle on that a little bit and send it to you, okay?

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Okay.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Thanks.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Sure. All right, anything else while we're gathered here together as a group? All right, well, I think, we'll give everybody a little time back then.

Aaron Seib – Chief Executive Officer – National Association for Trusted Exchange (NATE)

Thanks, guys, really appreciate your leadership.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Sure, I think it's time to open up for public comment, is that right?

Public Comment

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Yes, please, operator or Lonnie, can you please open the lines?

Lonnie Moore – Meetings Coordinator – Altarum Institute

Sure, 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. If you are already on the telephone and would like to make a public comment, please press *1 at this time. Thanks.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

It looks like we have no public comment. So, thank you, very much to Josh and Meg you have undergone a lot of work, we really appreciate all of the time that you've put forth to help corral everyone for the Task Force and so thank you for everything and we're getting close to the finish line, so thank you, all for staying with us and we'll talk to you all soon.

Joshua C. Mandel, MD, SB – Research Faculty – Harvard Medical School

Excellent, thanks, everyone.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Thank you.

Meg Marshall, JD – Director, Government Health Policy – Cerner Corporation

Thank you.

Leslie Kelly Hall – Senior Vice President of Policy – Healthwise

Bye, have a good day.

Michelle Consolazio, MPA – Federal Advisory Committee Program Lead – Office of the National Coordinator for Health Information Technology

Bye.

David Yakimischak, MBA – Senior Vice President & Chief Quality Officer – Surescripts
Bye.