

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

Presentation

MacKenzie Robertson – Office of the National Coordinator

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

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

Here.

MacKenzie Robertson – Office of the National Coordinator

Thanks, Deven. Paul Egerman?

Paul Egerman – Businessman/Entrepreneur

Here.

MacKenzie Robertson – Office of the National Coordinator

Thanks, Paul. Dixie Baker?

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

I'm here.

MacKenzie Robertson – Office of the National Coordinator

Are you there Dixie?

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Yeah, I'm here, somebody else is ...

MacKenzie Robertson – Office of the National Coordinator

Paul, I think your line might have some background to it.

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

It might be Leslie; call her in the roll then she can mute again.

MacKenzie Robertson – Office of the National Coordinator

Okay. Neil Calman?

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

This is Dixie, can you hear me now?

MacKenzie Robertson – Office of the National Coordinator

Yes.

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

Yeah.

MacKenzie Robertson – Office of the National Coordinator

There you go, thanks, Dixie.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Okay, thanks.

MacKenzie Robertson – Office of the National Coordinator

Judy Faulkner?

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

Here.

MacKenzie Robertson – Office of the National Coordinator

Thanks, Judy. Leslie Francis? I know you're ...

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

Here.

MacKenzie Robertson – Office of the National Coordinator

Thanks, Leslie. Gayle Harrell? John Houston?

John Houston, JD – University of Pittsburgh Medical Center

Here.

MacKenzie Robertson – Office of the National Coordinator

Thanks, John. David McCallie?

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

Here.

MacKenzie Robertson – Office of the National Coordinator

Thanks, David. Wes Rishel?

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

Here.

MacKenzie Robertson – Office of the National Coordinator

Thanks, Wes. Micky Tripathi? Kitt Winter?

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

Here.

MacKenzie Robertson – Office of the National Coordinator

Thanks, Kitt and any ONC staff members on the line?

Kathryn Marchesini, JD – Office of the National Coordinator

Kathryn Marchesini.

MacKenzie Robertson – Office of the National Coordinator

Thanks, Kathryn. Okay, with that I'll turn it back over to you, Deven.

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

Okay and I'll turn it over the Paul.

Paul Egerman – Businessman/Entrepreneur

Thank you; it's Paul Egerman, I just want to say good afternoon, welcome to our Privacy and Security Tiger Team conference call and I said good afternoon for Dixie and Wes, and the people on the West Coast let me also say good morning. Today we are actually having our last scheduled conference call on the topic of query response or last according to the schedule that we were hoping for. Query response is where one computer systems asks another computer system, another EHR system a question and gets a response.

Our agenda for today is to try our best to complete that discussion and as I said to try to stay on schedule this is our final meeting to discuss these topics and wrap up the discussion and we had these three scenarios and today we're going to focus on scenario number two and begin discussion on scenario three if time permits. We may not finish scenario number three and if we don't we will simply report to the HIT Policy Committee in our scheduled meeting in April, I think it's April, the beginning of April, April 3rd, the progress we made through scenario number two.

To quickly refresh everybody's memories our goals here are not to attempt to alter the rules that already exists with providers having responsibilities and allows the providers to share information between provider organizations, and to also acknowledge that that occurs all the time every day. Our goal is actually to reduce potential real or perceived barriers.

And also, to refresh everyone's memory at the bottom of the screen you will see the three scenarios. Scenario number one is targeted query for direct treatment which I'm going to talk a little bit more about in a second.

Scenario two, which Deven is going to be talking about a little bit later is targeted query for direct treatment data covered by some other, it says more stringent, but some other privacy law most likely a state law.

And scenario number three is a non-targeted query. And again, to briefly remind everyone scenario one involves HIPAA controls. The assumption is Patient Z and as I pointed out at the Policy Committee meeting we are de-identifying our patients here, so Patient Z is being seen by Provider A, Provider A has knowledge that Patient Z has also been seen by Provider B and so then Provider A basically queries Provider B for records. So, those are the scenarios.

We have one final issue with scenario number one, we answered like 5 or 6 questions about scenario number one and if I can flip successfully to this ...

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

Oh, look at that.

Paul Eggerman – Businessman/Entrepreneur

I guess I'm showing, after doing this Deven for a few years now, that I can actually work the slides.

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

Well done.

Paul Eggerman – Businessman/Entrepreneur

So, here we asked six questions on scenario number one. We gave answers to questions one through five. And what we want to do is pick up our discussion on question six, which is the last question about scenario number one. And that question actually ended up having two parts. So, the question is should there be a requirement to account for and log query and/or disclosure and to share the log with a patient upon the request?

And in our last conversation we said, yes, that if you're the record holder, yes, you've got to basically keep track of whether or not somebody has asked for information and whether or not you've given information out, that's an important thing to log and it's also an important thing to make available to patients if they would like to see it.

So, then the next question that was asked, sort of a question about question six, well what about the data requester as opposed to the data holder? Should the requester also log the query? And in our last conference call we started to talk about this, it's an interesting question, and then we ran out of time. So, that's why we're sort of picking up the discussion at this point.

And we actually came up with a straw response to help generate the discussion, which is, yes the requester – basically, it says, yes it would be great if the requester has the capability to log the query but it's not a requirement. And so, that's – if everybody's okay, we'd like to try to pick up the discussion exactly at that question and see if there are any views or response to how we put down a straw response?

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

So, this is David...

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

This is Leslie Francis – just a question. How difficult would it be to create that capability?

Paul Eggerman – Businessman/Entrepreneur

Good question Leslie, I don't know the answer.

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

This is David, I would push that this ought to be symmetrical, that if you can log what you responded to you can also log what you queried and I think that it's – I think from the point-of-view of the patient they're likely to find either of those equally valuable depending upon the circumstances. So, who is being asked and not responding? Who has never been asked? And who is asking? All seem to be equally important questions depending upon what your concern is. So, I would make this symmetrical.

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

This is Wes, I would note that there's no HIPAA requirements to log the query that I can think of, but there is a HIPAA requirement to log disclosures pending a final rule. And, so, at least the weight of our recommendations has a bigger hammer behind it for the data holder. I would agree that it would be nice for a patient to know that they can ask a provider "who did you query for my data and who responded" but I don't have a sense of the relative strength of the two needs.

I would like to clarify that when we say "requester should have the ability to log the query" we are saying that this would become a certification requirement for an EHR, otherwise, if we're not saying that then I'd say this is a pretty vacuous response.

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

Yeah, I think that we – this is Deven – I think that this, that really both answers to six as pointed out in Leslie's question about technical capability will probably need some follow on work by standards on the technical piece of this, because they, you know, I think we're all assuming that there will be a capability that could be built into certified EHR technology, the capability to log a query from an outside computer, which may be less of a challenge from a technical stand-point than, you know, sort of where the accounting of disclosures proposed rule had landed, which, you know, for folks – can I get whoever's got lot of background noise to please mute? Thank you.

You know, sort of assumed that since computers don't necessarily have a capability and an audit trail-like functionality to distinguish between somebody internally accessing a record and somebody, you know, that then ends up getting subsequently disclosed based on ...

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

Deven, this is Wes.

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

... technically do this, but that's not our purview that has to be passed on I think.

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

Yeah, I think it's right to send it to the Standards Committee but I'm sure they're going to agree and I'm sure David would agree now that the technical difficulties of creating the log in either question are rather minimal since there is already a required log functionality and this differs in the details.

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

Yeah, this is David, I'll just confirm that. This is all going to go through a very controlled access port to the EHR's world, so, you know, it's a border crossing with a single gate in it, so it shouldn't be too hard to do either way.

Paul Egerman – Businessman/Entrepreneur

And this is Paul, I agree that it's not a – it doesn't strike me as a difficult technical barrier.

Gayle B. Harrell, MA – Florida State Representative

This is Gayle; I'd like to say from a medical/legal point-of-view I think it would be important to make sure that you have it on both sides.

Paul Egerman – Businessman/Entrepreneur

Well, so ...

Gayle B. Harrell, MA – Florida State Representative

The requester as well as the responder ...

Paul Egerman – Businessman/Entrepreneur

And so the issue is, as David is saying, yeah we should make this symmetrical it should be on the requester and the responder, and so I'm just curious is there anybody who disagrees with that?

Gayle B. Harrell, MA – Florida State Representative

Well, I ...

John Houston, JD – University of Pittsburgh Medical Center

This is ...

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

This is Dixie; it seems to me, and I'm not an attorney so I'm going to look for Deven for confirmation, but, it seems to me when a provider sends a query to somebody else that says "I'm looking for Dixie Baker's birth date, blah, blah, blah" you know, and she says, "You saw her wherever," you know, whatever would be in a query, I'm asking you for her, any data you have about her, okay? It seems to me that that already would be logged in the accounting of disclosures.

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

Well, I think what – this is Deven – I think what is clear is that actually arguably is a disclosure and so, you know, again the accounting of disclosure requirements are still being kind of noodled over by the Office for Civil Rights, so, but, in some respects I think one could make a very valid argument that this is also a disclosure. I think it's just a matter of whether we, as a policy matter, think that the, you know, that having it on both sides is ideal.

You know, ultimately, we don't get to make the ultimate decision it will be, you know, up to the Policy Committee to decide if they agree with the recommendation and then ultimately it will be, you know, ONC and HHS that will take that under consideration when they make the policy, but, I think we're trying, you know, to be as helpful in terms of what ideally should be there if it could be.

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

This is Wes.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Okay, but the reason I was asking is because I agree with you and because of that I don't think we need to say anything about having to log the query at all. So, yeah, I do disagree that we need to say anything about it.

Paul Egerman – Businessman/Entrepreneur

So, Wes, were you trying to say something?

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

Yeah, I just, I just, first of all I don't – let me say that I think it would be a good idea if we did say something about logging queries whether we need to or not, I think it sometimes doesn't hurt to redundantly repeat yourself.

Second, I think there's general agreement, based on the straw poll that Deven took, that both the data holder and the requester should log the query and have the ability to provide that information to a patient, however, I think that it's worthy of noting that the levers that ONC has to enforce this issue against the data holder and against the requester are different, and as Dixie said, as Deven said, there is a strong possibility that it would be handled automatically through the accounting for disclosures rule depending on how they deal with disclosures for treatment.

But, there is no HIPAA rule to support this on the requester that I'm aware of and there I think direct certification and meaningful use are the only policy levers that I'm aware of that ...

Paul Egerman – Businessman/Entrepreneur

And so, Wes, what I don't quite understand, so are you saying based on that that you think this is a good thing for us to do? That we should ...

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

I think the answer to both questions should be yes.

Paul Egerman – Businessman/Entrepreneur

Okay, so what I'm hearing is – I'm not hearing anybody saying they don't want to do this. The only discussion is whether or not we have to say we want to do it.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Right.

Paul Egerman – Businessman/Entrepreneur

But, if I'm hearing this right there's nobody who is saying, "No, it should be optional" or "It should be a best practice," everyone thinks there is value and it's not a big deal. Am I hearing that correct?

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

Correct.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Yes.

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

Yes.

Paul Egerman – Businessman/Entrepreneur

Okay, so, I think then that that answers the question, right? So, we have an answer and the answer is "yes the requester should also log the query, see previous paragraph" right? That is our answer.

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

Yes.

Paul Egerman – Businessman/Entrepreneur

That is great progress and so with that answer we're going to, at least for now, declare success on scenario number one, targeted direct treatment, and so everyone should be doing a very quick virtual victory lap, because there was a lot of progress to get to this point. And, now we are going to jump into scenario number two.

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

Yes.

Paul Egerman – Businessman/Entrepreneur

Deven, do you want to take us through scenario number two? This is really exciting.

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

Yeah, I would like to, thank you very much Paul appreciate it. So, scenario two is, you know, we're still talking about targeted queries, so, you have some knowledge of who the provider is for Direct Treatment, but the distinction here is that there are additional laws that may apply and I think Paul is right most of them are at the state level, although there is the federal law on some substance abuse treatment data that also has heightened requirements attached to it and most of those requirements deal with additional consent or authorization that needs to be obtained from the patient before PHI can be disclosed.

So, you know, I think we've got sort of this very similar set of questions that arise under scenario two as arise in scenario one, but rather than going sort of back through those question one by one, you know, our assumption is that those are dealt, that you would answer those questions very similarly in the case of scenario two but with the chief difference being the need to obtain consent or authorization from the patient. And so with that we just tried to scope out some straw responses around scenario two that we're teeing up for full Tiger Team discussion on this call today.

I know there is probably a good many of you on the call who have actually been waiting for this one to come up assuming that scenario one was easy and it turned out that it wasn't, but again, I think we laid the foundation for getting to this point.

You know, the beginning of the straw recommendation reads with a statement of what should be obvious, but sometimes people forget, which is that both data holders and requesters have to comply with the laws that apply to each of them and that means that in some cases requesters have to obtain the patient's consent or authorization prior to making a query and in some cases the data holder must have the patient's consent or authorization prior to releasing the PHI.

And in any particular use case it could be that obligations apply to both the requester and the data holder, again, depending on the type of data and depending on what state they're in in many cases. The form of that consent also has to comply with the applicable law, in other words, the requester has to have a form that satisfies their legal or its legal obligations if in fact they have any additional requirements on their part and the data holders have to have a form that satisfies their legal requirements, again, in a circumstance where it's applicable and these forms may in fact not necessarily be the same in terms of what is legally required to obtain the consent or authorization from the patient in order to permit either the query or the response, or both.

And so, given that scenario, you know, ideally the parties to a query response need to have some sort of way, and we've framed it as a technical way, but maybe that's not quite the right way to frame it, but they must have a way to transmit and record applicable consents and authorizations.

And then we've tried to say something more about a circumstance that we're aware of with respect to what's called Part 2 data which is data that comes from a federally funded substance abuse treatment program or substance abuse treatment facility and that has either identified or has the possibility of identifying the patient as somebody receiving substance abuse treatment, there, there is a unique part of that law that actually binds the requirement to get consent or authorization to downstream recipients so that they actually are required to sort of get subsequent consent or authorization for re-disclosure or follow any consent for authorizations provided by the patient in the initial disclosure.

And, so, you know, ideally there would be a technical way to put subsequent recipients of that data on notice that it's got a legal requirement attached to it that is federal in nature, so, you know, crossing state lines it still will need to be complied with is my understanding.

And then the last thing we chose to say here was that, you know, certainly the legal obligations are on the entities themselves but as we have said in previous recommendations that we've made if an entity wants to contract that obligation out and use a service to manage consents or authorizations for them that there wouldn't be...we don't see any reason to bar that but, you know, the legal obligations have to be complied with.

And, I guess the last thing I'll say before opening it up to discussion is the invitation that you all received to join the Privacy and Security Workgroup of the Standards Committee on the update that they are getting on the data segmentation initiative is related to some technical work that the Office of the National Coordinator is doing in order to help data holders and, you know, presumably maybe requesters in some circumstances, be able to comply with any consent or authorization rules that apply to particular types of data but don't necessarily apply to the entire record itself.

So, that, if for example the patient said, "I don't want you to share my HIV treatment data," and there's a particular consent requirement that applies to that provider that requires them to get the consent for that reason they are still able to honor the patient's request and their legal obligations with respect to that data but still be able to share other types of data and that work is ongoing and is responsive to existing legal requirements that require consent or authorization for specific data types.

So, I'm going to stop there, because we're not, you know, we sort of thought, again, there's a lot of law already on the books here that either requesters and/or data holders need to comply with and this may be in many respects a technical discussion about how those consents get passed along and recorded when it's necessary to do so.

Paul Egerman – Businessman/Entrepreneur

And Deven, this is Paul; just before we get started I also had one question which is ...

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

Sure.

Paul Egerman – Businessman/Entrepreneur

You describe this all about laws and probably state laws in terms of what's required for consent and authorizations.

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

Yeah.

Paul Egerman – Businessman/Entrepreneur

But, shouldn't scenario two also cover a certain sense or a provider organization for whatever reason decides to establish their own rules for a more stringent consent/authorization approach more stringent than what HIPAA does even though it may not be required to do so by state law?

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

Yeah, I can see that, absolutely, like if they want to make a commitment to the community that they serve that they're not going to release data or certain types of data without an authorization then that policy ideally we have the technical capability to honor that as well.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

So, maybe we could just add or policy.

Paul Egerman – Businessman/Entrepreneur

Yeah.

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

Yeah, yes that makes sense, good point.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Yeah, good point.

Gayle B. Harrell, MA – Florida State Representative

Deven, I have a question on that also, what is an individual request that no information relative to my HIV status be released? And it may not be in a particular state allotted that limits that disclosure, are you providing your scenario where an individual request that certain information not be released?

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

So, I'm sorry, I was interrupting somebody?

Paul Egerman – Businessman/Entrepreneur

Yeah, this is Paul; I guess my response to that Gayle would be that that would be similar to the healthcare organization establishing their own policy so if the individual requests it and it was consistent with the healthcare organization's policy to allow that then they would allow it.

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

Yeah.

Paul Egerman – Businessman/Entrepreneur

You know, I mean, or, you know, that would be the way I would view that. In other words if you say the healthcare organization established its own policies on this then you've given them some flexibility to be responsive to what they think the needs of their patients are. I don't think you can necessarily commit them to being responsive to every request.

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

Right, well, it ...

Paul Egerman – Businessman/Entrepreneur

Because certain things they may not agree with, but if they have the flexibility to establish their own policy under this concept then that allows them to decide themselves if they want to respond to that particular patient request.

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

Right.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Yes.

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

Right and this is Deven, and that's largely consistent with where the law addresses that issue Gayle, which is to say that patients can request restrictions on their record and it's really up to the provider about whether they will honor it or not except in one circumstance actually which we may want to mention on these slides and that is if the patient pays out of pocket for care and asks that the information not be shared with a payer then they need to have that honored there is a requirement to honor that and so this would be another scenario where, you know, having a technical capability is not an easy thing to do, but, you know, to be able to release, to be able to withhold records that the patient doesn't want to have sent, in this case to a payer, is important from a compliance stand-point.

Paul Egerman – Businessman/Entrepreneur

But, Deven, this is Paul again, to be clear the example you gave about payer is outside of our scenario our scenario is about targeted...

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

That's right, you are absolutely right.

Paul Egerman – Businessman/Entrepreneur

Targeted query response relative to treatment.

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

Between providers that's right for treatment.

Paul Egerman – Businessman/Entrepreneur

Yeah, relative to treatment.

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

Absolutely, good point, Paul, thank you.

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

This is Wes, with regards to bullet one and just looking at some discussions we've had about services in place what we've seen is parties have a way to transmit their requirements for consent and to transmit the actual information and the act of creating the consent, really two different things.

Paul Egerman – Businessman/Entrepreneur

That's a good point.

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

One is saying, you know, in our state and by our policy here's the information we need when you can send this back filled out with some level of assurance, you know, which I think we may have already said electronic signature may be possible, I don't know, then I can consent the release, then I can release the data.

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

I would – this is David – I would argue Wes that's not a requirement necessarily there are systems up and running today where there has been pre-negotiated the constructs that are necessary for consent to be transmitted without invoking a protocol it's just been pre-negotiated.

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

And this is Kitt Winter. Our organization is not a HIPAA covered entity and we do have it established where we obtain a patient authorization to release the information to us to provide the information for processing eligibility for their disability claims. And we, as a requester, obtain the authorization and when we send the query to the data holder we allow the data holder to come back to us to obtain a copy of the authorization before they respond to the query. So, and that's also done – we do have eAuthorization as well.

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

So, that's good to inform the discussion on targeted Direct Treatment. I'm going to yield to David on that requirement, but I think it should be clear that we're – what I was going to say, I guess that's not true, so, I'm just going to drop what I said.

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

So, and this is David, just to put the context around my concern is that existing approaches to computable consents sort of arbitrary, abstract computable consent of which there are several on the books and the standards, you know, opportunities out there or standard groups have them, have not scaled at all, because they're so complicated to implement and ...

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

Yeah, but I was actually thinking of a much simpler arrangement that's used in care everywhere where the requesting, the record holder simply responds with the form they need filled out. I don't believe that the computed consent option is scalable not for technological reasons but for other reasons and ... but I was thinking of a simpler approach.

Paul Egerman – Businessman/Entrepreneur

Yeah, this is Paul, I know you said you withdrew it, but it just seems like it's a reasonable thing at least as a best practice for the data holder to say, "Here's what I need."

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

Oh, I think, my interest is in seeing our regulations allow a number of innovative approaches and therefore, you know, if there was some way perhaps we could come up with a recommendation that didn't make it seem so set in stone, but still recognized that that's a good idea.

Paul Egerman – Businessman/Entrepreneur

So, that would be a best practice recommendation?

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

Yeah, yeah probably.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Well.

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

This is Leslie – just one other quick thing to note it's an unfair trade practice to announce that you're going to do something with respect to data and not do it, so there's probably going to be an incentive for providers anyway.

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

I don't get what that means?

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

Yeah, I didn't follow that either.

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

Oh, so, if you're going to actually have a policy that they're going to not make disclosures of a certain class say and patients might be given that policy and read that policy if they don't follow that policy they're going to have legal issues anyway.

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

Yeah, unless they're nonprofits.

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

Well, yeah.

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

This is Judy, and I wonder if I could mention a couple of things? I think, what we do in Meaningful Use is very different than what the state laws are, you could have state laws in different states of the country that do different things on many different topics, but it doesn't necessarily drive what Meaningful Use does or doesn't do, I think they're two separate issues.

So, when we talk about privacy I think the fact that some states do have various and different privacy regulations in them should be separated from what we decide is right to do for Meaningful Use that's the first thing.

Second thing is that I think as software developers we run into a really interesting situation, if we know that that patient is on an antidepressant and we know that that patient is in the ED ready to be given a strong pain killer that may have a deadly reaction what do we do?

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

Judy, can you explain how that applies here I'm having a little difficulty with that?

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

Well, it just applies in general. I mean, even within your own organization if you're not allowed to share the fact that this patient ...

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

Well, I agree.

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

Yeah.

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

I think the question here is ...

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

But we can ...

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

Is sending the antidepressant information on request, I don't think the request is going to include what we're about to prescribe.

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

Yeah, that's true, but if you have the same vendor on both sides it's possible that the same vendor, that information and can allow the physician to continue on doing something that could be fatal.

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

Well, you know, so this is Deven, number one I'm going to have to disagree that Meaningful Use is somehow to be divorced from the legal climate in which all providers have to operate and that we have to acknowledge, we're not talking about layering on any additional consent requirements as part of Meaningful Use in this particular set of conversations that we're having, but I think we need to realistically understand the circumstances that providers are under in a query response situation like this and ONC has specifically asked us to consider this scenario because it exists in the real world.

And the laws are very varying on this, you know, some of the laws have emergency overrides attached to them, some of them don't apply to prescription drug data and it just really varies, but I think we can assume or at least we have to assume for purposes of our own discussions that the policy issues, that are very hard on this matter, have been weighed by legislatures before those laws were enacted in the first place and all we're trying to do is equip the community with the tools to comply.

Gayle B. Harrell, MA – Florida State Representative

This is Gayle, I'd like to jump into this as well, various states have different regulations regarding this and I think as a certification requirement we need to make sure that our technology is out there to comply with those state laws.

Paul Egerman – Businessman/Entrepreneur

And this is Paul, what you just said, Gayle, is an interesting comment about how certification should or might work as it relates to a broad statement about state laws, but what I'd like to do is refocus this discussion specifically to the questions that we have on the screen, because the question that you just asked is a broader discussion. And, so if you want you can answer it in the context of the question that we have on the screen.

So, what we said so far in this scenario number two is we've said first that there is a – it would be a best practice for record holders to say something about what is the form of consent for authorizations that are either required by them or required as a result of state law or it would be required by them as a form of policy, that that would be a best practice.

And then I'd like to see if we can comment on this next bullet, we just say that the parties to a query response must have a technical way to transmit and record consents and authorizations. So, without describing what that technical way is, the way I read this it would be that if you're doing this process that there's some way to electronically communicate that you have that patient's consent or authorization to provide that information and that the requester has the ability to send that and that the record holder has to have the ability to basically receive that and process it.

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

So, this is David, can I then drill into that question? I think, maybe what...a question to add to the list here is whether or not it is optional for a query response system to support such complicated circumstances? So, I'm speaking from just the experience of, you know, being involved with a number of different data sharing networks in some cases when the consent issues got too complicated and all the parties couldn't agree on how to handle it there was an agreement just to exempt that data from ever getting into the data sharing system in place.

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

Yeah.

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

And that seems to be, you know, a practical reality for some of these incredibly complicated edge cases and I would like to see us word this in some way that makes it, you know, an optional capability, you could still be a query response system if you didn't cover every possible edge case.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

This is Dixie, that's why I think that in the longer term I think the idea of passing around all these rules, consents, authorizations is not going to prove scalable and I think over the long haul we are more likely to move toward a services-based model nationwide where they are able to query for real computable consents, we don't have that yet, but I think that that's the direction that the nation is likely to go. And I think that it's important, at this juncture, that we not say something that would keep that would be a barrier for that to actually come about.

So, I think that to really bring bullet one and bullet three together and to allow this kind of evolution toward a real broader, more computable, more scalable model that we should include in number one not only to transmit the consents and authorizations themselves, but also to have the option of transmitting a pointer to a service that would provide the consents and authorizations.

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

Well, I mean, this is David, I like the spirit of that, but I think that's way too technically limiting it's more likely that the authorization service would transmit an authorization key that would permit the exchange to occur rather than pulling apart ...

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Yeah, yeah, but what I'm saying is it needs to allow, and you're probably right I was too specific, but it needs to allow other than sending these consents all over the place, it needs to either transmit and record these authorizations as we have it there or some data that would allow the recipient to – or the – yeah, the recipient to be able to discover the consents and authorizations.

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

I wonder if ...

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

The way it's there right now doesn't negate what you're saying. I think if we get more specific it might make it limiting, but I think it's not non-inclusive of what you're saying.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

I disagree, transmitting a consent and authorization to me is transmitting a consent, that's more than transmitting here's the URL to the service where this patient's authorizations are supported.

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

Maybe it should be ...

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

What if...

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

Like in – have a technical way to ensure that appropriate consent and authorization has been obtained? I mean.

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

Yeah, that's one way to do it or, you know, must have a way to, you know, communicate the – when consent is required and what the elements are, and to be able to obtain that and be able to record it, you know, communicator ensure – I mean, they have to comply with the law at the bottom line.

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

Yeah.

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

So if there are technical capabilities that can be developed to enable that and if there isn't really a specific technical pathway that we wanted to regiment for certification but rather to, you know, encourage the development of approaches that might be scalable over time that sounds like is a better approach.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Yeah, yeah, I think transmitting to communicate and delete that record ...

Paul Egerman – Businessman/Entrepreneur

And this is Paul, one comment I make is...

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Authorizations can't do it.

Paul Egerman – Businessman/Entrepreneur

We also can't let the perfect be the enemy of the good. I mean, you can't...

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

Right.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

I think transmit is...

Paul Egerman – Businessman/Entrepreneur

When we say that you're going to create a way to transmit and record consent and authorizations you really are just simply saying you're going to create a technical way, you're not saying that you have to create a way to transmit and record report all consent and authorizations, so, hopefully, you come up with a vehicle that will work a lot of the time though and that would be by itself a step forward and whether or not you transmit it directly or you transmit information about some other entity or something that has that information already, that's sort of like a, you know, I view that as really a very fine point either way you basically have a technical way to transmit the information that's necessary for a consent and authorization.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

I like Deven's suggestion to replace transmit and record with communicate.

Paul Egerman – Businessman/Entrepreneur

Yeah and that's fine, so if we call it communicate ...

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

That would be fine with me.

Paul Egerman – Businessman/Entrepreneur

That's fine and again, my point is not to expect that we necessarily can handle absolutely every – with this approach every contingency in the country, but if we can come up with ...

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

And this is ...

Paul Egerman – Businessman/Entrepreneur

I mean, basically look at how we've done certification we haven't tried to use it to solve everything, but hopefully we do something that moves things forward and maybe that causes some policies and jurisdictions to change their approach to simplify things a little.

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

And this is Kitt I was just – out of curiosity should be looking at some of the work that the HL7 Security Workgroup and the S&I Framework Data Segmentation for Privacy Workgroup are doing around this whole representing a consent authorization language? I mean, is this something that we might be able to pull from what other workgroups have done to incorporate into what we're talking about?

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

Well, although, I mean, Kitt that's one of the reasons why we're the Privacy and Security Working Group of Standards has graciously allowed us to hone in on their call on Wednesday, because people are getting an update on where that technical work is in the pipeline, but I think it's also important for us to remember that as a policy, a committee of the Policy Committee it's not really our job to dictate, you know, how the technical response goes forward but to instead sort of speak to the relevance policy issues and a desire for a technical approach that helps facilitate those policies being honored, but we usually don't go down into the technical details.

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

This is the part, this is Judy, this is the part I don't understand, if they are going to do the standards on anything that really is a policy but the Policy Committee hasn't said a word about it, then by doing the standards on that they are jumping policy and it becomes what goes into meaningful use. So, it seems strange to me because it does seem like we shouldn't just say they're doing standards, we're doing policy we can each do our own separately, it seems like they have to coordinate.

Paul Egerman – Businessman/Entrepreneur

This is Paul, that's a great comment, Judy and as we discussed in the Policy Committee I think there is a lot of – you know, I agree with what you're saying, this is not the right forum to debate that issue though, because this Tiger Team won't have any ...

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

Oh, yeah, I know we're just debating.

Paul Egerman – Businessman/Entrepreneur

I mean, this is a forum where a lot of people would agree probably with that, but ...

Kathryn Marchesini, JD – Office of the National Coordinator

And Paul this is ...

Paul Egerman – Businessman/Entrepreneur

Let's ...

Kathryn Marchesini, JD – Office of the National Coordinator

Paul, this is Kathryn from ONC I just wanted to address that. The use case that is the – part 2 for data segmentation for privacy, the standard that they're looking at is implementing an existing policy so the policy on the topic that they're looking at has already been addressed and they're using that kind of as a pallet to look at for other efforts. So, just to clarify that.

Paul Egerman – Businessman/Entrepreneur

And I appreciate that, thank you very much, but let's return to what shows on the screen, we're looking at scenario number two, target direct treatment with it says sensitive data or some other policy or legal requirement for a consent and authorization, we've agreed about a best practice and I think we're in agreement on bullet one, we have to do some wordsmithing on it.

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

Yeah.

Paul Egerman – Businessman/Entrepreneur

To make it clear that we're communicating, but we think having a technical way to do that makes sense. So, let's move onto the second bullet. I wonder if you could take us through that Deven?

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

Well, so this is another one in that this sort of gets a little bit to Kathryn's update, this is the use case that they in fact used on the, you know, the standards initiatives regarding data segmentation and that's in the case of data covered by the set of rules commonly known as part 2 that deal with substance abuse treatment data that comes from federally subsidized substance abuse treatment programs which sometimes can be within larger general medical facilities or federally subsidized substance abuse treatment facilities that are standalone, that data is subject to specific rules under part 2 that do require specific patient authorization and where that authorization is also needed for what's called re-disclosure, which is not a term recognized in HIPAA at all, but it is in part 2 where any subsequent disclosures of that information also require authorization from the patient.

And so, you know, this was added, you know, we didn't construct this scenario to necessarily around just the part 2 rules, you know, my thinking in adding this particular provision was to say, you know, look this is data that also has some, even more stringent policy requirements associated with it than is true for state law circumstances and maybe this is another place where a technical way to at least communicate that re-disclosure restriction would be ideal.

You know, since, you know, one way to look at it is to say, well, you know, ONC already picked up that ball and started running with it so we don't necessarily need to address it from a policy stand-point, you know, another way to look at it would be if we're doing a set of policy recommendations around what happens in queries for sensitive data that would be a class of data requiring yet additional considerations from a technical stand-point or where additional technical capabilities would be ideal, you know, whether it's at a point where it can be required is another matter.

So, you know, I leave it up to you, but that's the reason why the bullet was in there was to try to scope out some of the additional circumstances that might be triggered by a scenario two query.

Paul Egerman – Businessman/Entrepreneur

So, this is Paul, so in effect what we have there as a second bullet is almost like a general technical specification that basically says, well, if you're going to have a way to communicate information about queries you also have to have a way to communicate this data, this information if it is needed.

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

Yeah and some entities will need it and some will not it just sort of depends on whether they're doing substance abuse treatment and it's federally funded within their facility so that this might apply and this is also one of those circumstances relevant to David's point earlier, which is that if the circumstances are complicated enough around sharing data of this type a lot of folks will decline to share it, but I'm hoping that that scenario can be changed, but having said that, you know, the desire here was just to say, hey, don't forget about this when you're looking at the technical, desired technical capabilities.

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

Deven?

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

If that re-disclosure – you know, persists with the data is the recipient then ...?

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

So, this is David, I wanted to make a point about that just a technical detail that it seems to me that the re-disclosure constraint is attached to data but not to the query response service itself and we shouldn't co-mingle those two which I'm afraid that the data partitioning...group may be guilty of doing. I will listen carefully on Wednesday, but, you know, the data can be moved by a variety of different models, the re-disclosure tracks with the data not with the transport that was used to move it.

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

Well, that's right and whether it was query or whether it was ...

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

Push or ...

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

A transaction initiated by the data holder.

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

Right, so, I just want to make sure we don't somehow pollute the notion that the query service has to enforce the re-disclosure that's a function of the data itself and any service that touches it.

Paul Egerman – Businessman/Entrepreneur

So, David, this is Paul, so basically, what you're saying if I'm hearing it right is it's almost like there's another bullet or a sub-bullet needed which is, you know, when there is a re-disclosure restriction the record holder needs to communicate that restriction when the data is communicated?

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

Yes, I'd decouple it from the means by which the data is moved.

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

Right.

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

So, in other words you could do a query pull down some restricted data then do a push and send that restricted data to somebody else, he needs to know it's restricted not because you did a query or a push but because the data itself is flagged as restricted.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

So, you're saying it should be really a policy related to making it an attribute of the data and not related to the query response at all?

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

Yes.

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

Yeah.

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

I think otherwise we create unbelievable complexity that will ...

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

I agree, yeah, yeah that's a good point, but where does it come out in policy then or does it?

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

Well, you know, so that actually suggests that we take it out of this set of recommendations because it's not really related to query.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Yes, but where ...?

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

And we take it up at a later time if we need to, but again, this does seem to be in the area where there is already some technical focus going on by the S&I Framework and ONC through the data segmentation initiative in response to the existing legal requirements.

Paul Egerman – Businessman/Entrepreneur

Yeah, this is Paul; but I'm not sure we take it out.

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

Okay.

Paul Egerman – Businessman/Entrepreneur

I think the bullet we have here is correct, the, you know, requirement somehow needs to be communicated.

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

Right.

Paul Egerman – Businessman/Entrepreneur

But the record holder needs to have an ability when they communicate the data to also communicate the re-disclosure restriction.

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

This is Judy and the way that we see it often work is let's say A discloses to B and then B discloses to C, so then when A discloses to B the physician in B is looking at that data and sees "oh, I had 23 drugs for this elderly person and the other system has 25 drugs. I'm going to take the other two that are missing and move them into my system, because I see them there as a note on this other stuff but it's not incorporating in my system yet."

So, they move it right into their system so that later on drug-drug interactions and alerts, and all the proper things can happen. Then what happens when they have to disclose to C, because that information is now not just in this other file so it isn't re-disclosed, but it is part of the decision making process of B as it goes onto C.

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

So, I think, this is David, I think that that, you know, when you tease data out of a restricted package and start mixing and matching it with unrestricted stuff – that's why this problem has remained unsolved by the vendors, because it just gets so complicated at that point.

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

Yeah, it really does.

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

It's almost unimaginably complicated and ...

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

Yeah and then what happens next, David, is that the customers are going to say, "Well, you knew there were 23 drugs in B and that A sent us over 25 and you know that there's 2 extra's, why do we have to hand-match all 23, figure out the remaining 2 and move them over? Do it for us." And, so that's the real situation we're going to get into.

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

Or if you get a restricted, you know, C-CDA from a substance abuse facility and you import selected drugs that may have nothing to do with substance abuse but you selectively import them into your medication list is that now restricted?

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

That's right.

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

You know, the fact that they're taking an aspirin a day, it came ...

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

Yeah, exactly.

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

From a restricted source, it gets ... it's a nightmare.

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

Yes, that's what I think we're getting into.

Paul Egerman – Businessman/Entrepreneur

So, Judy, what should we do with this topic, this issue? We've got something written here should we just not say anything?

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

Well, that's a good question, I hadn't been thinking of that, I was just thinking of the complexity and I'd almost think that anything we do starts to become somewhat dangerous and David it sounds to me like you're saying the same thing it's a web of complexity we're getting into here and we may be naïve about what we're getting into.

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

Well ...

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

Yeah and it's one of the reasons I wanted to make sure that it was okay to just exclude some of those things from our networks if up front we know that we can't properly deal with them downstream rather than to force the whole network to come to a screeching halt because we can't figure out how to handle those really hard cases.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

You know, this is Dixie, if, you know, I think David's right I think that this – but, we haven't seen segmentation yet, but I think that this is likely to be an attribute of the data in which case I would question why the cases where there's re-disclosure restrictions isn't already covered by our first bullet?

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

Well, I mean ...

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Wouldn't you also communicate, you know, if you communicate the applicable consent authorization you're also communicating any further restrictions on re-disclosure, because that's – oh, I see the difference is that this would be communicating policy versus – no, I think it's covered under the first bullet already.

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

Hmm.

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

I mean, if you interpret applicable consent and authorization to cover Part 2 data then it is covered I suppose.

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

Yeah.

Paul Egerman – Businessman/Entrepreneur

But, no, this is Paul, but I don't think what we're trying to do here is wordsmith what's written in the first bullet. What I want to find out is ...

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

Well, I ...

Paul Egerman – Businessman/Entrepreneur

Is there a consensus here which is what we say in that second bullet even if it's redundant with what's in the first bullet is that what we continue with?

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

That's what I'm saying I think it is. I believe it is, yes.

Paul Egerman – Businessman/Entrepreneur

So, even if it's redundant we agree with what it says there?

Gayle B. Harrell, MA – Florida State Representative

Well, this is Gayle, I think we're making recommendations or straw recommendations that really, given what Judy has said, are not solving a problem. We've got to get down to solving the problem or is the problem totally unsolvable?

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

Well, I mean, with all due respect, Gayle, I think that the issues that Judy raised, which are legitimate ones are not problems that we can solve, because they ...

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

Problems that we don't want to make worse.

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

They cut right to the issue of whether you ought to have these kinds of restrictions on data to begin with given the – you know, sort of the medical needs for this data to be real to treatment providers on the one hand and the desire to give patients the kind of assurances that they need for substance abuse treatment facilities to get them to come in for treatment and those are very contentious policy issues that are at the root of nearly every single one of these laws, we as a Policy Committee reporting to ONC or even to HHS don't have any tools at our disposal to re-organize those conversations.

Gayle B. Harrell, MA – Florida State Representative

No we don't, so are these recommendations we're making of any value whatsoever?

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

Well, yeah, well, I mean on the other hand it sort of – we're not going to – what I would argue that we're doing is not trying to re-debate, re-litigate those contentious policy issues but instead to say they are out there, this data, behavioral health data ideally there should be pathways to share it, these laws create some additional hurdles that ideally there would be technical solutions to help providers manage so that the solution isn't, well we're just going to leave it out, right, because nobody likes that either.

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

Yeah, so, Deven, I wonder if we changed the language to – instead of saying technical capabilities to transmit this requirement just say something like technical capabilities to meet or achieve this requirement are needed and my concern is ...

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

Yeah or even to say, you know, technical capabilities to help providers comply with ...

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

Right.

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

... existing obligations would be incredibly useful.

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

I like that.

Paul Egerman – Businessman/Entrepreneur

And this is Paul, I wonder if another approach would be – we sometimes get too focused on the concept that we're making recommendations, is to somehow capture some of this discussion in our report.

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

Yeah, which, you know, if you ...

Paul Egerman – Businessman/Entrepreneur

That by two vendors there was a lot of concern about the practicality of this re-disclosure requirement and it has to follow the data and it's very hard to understand how it could possibly work well, you know, I'm not saying that right, but that that may by itself be valuable information to simply communicate.

Gayle B. Harrell, MA – Florida State Representative

I agree with you Paul; I think you're right on target. You've got to – the Policy Committee needs to have some understand of the depth of the problem.

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

Yeah, well, you know, we actually had, this is Deven, some really thoughtful language in our original consent letter of 2010 where we talked about the sort of additional state and federal laws that required additional consent where we tried to sort of look at technical capabilities in our data segmentation hearing and it's a really – I recall it's a very fulsome discussion about the pros, the cons, the issues and then we basically said "ONC here it is, good luck" was the most we could do.

And we can pull some of that language in, because it's already been vetted and we, you know, can...you know, it covers about a page and a half of the letter that we sent at the time so I don't know that we want to pull it all in, but we can certainly make reference to it and pull some of that conversation in, you know, acknowledging that this has never been and never will be an easy space to navigate.

Paul Egerman – Businessman/Entrepreneur

So, I'm wondering if we're coming close to a consensus on scenario number two where we're saying some best practice stuff, we're saying there should be a way to communicate a consent and response, we're saying there should be a way to communicate information about re-transmittal but we're also saying that, gee there is a lot of concern expressed about how this re-transmittal stuff is really going to work and also still concerned about even on the segmentation piece.

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

Right.

Paul Egerman – Businessman/Entrepreneur

So, we ...

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

I think, this is Leslie ...

Paul Egerman – Businessman/Entrepreneur

In other words we can't necessarily get 100 percent agreement on everything and I think the fact that those concerns are there and I may not be capturing it well, but what I heard between Judy and David was like, you know, I mean, that was like, you know, it's like a way ...

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

This is Leslie, I agree with you, but I wanted to also emphasize I thought the language Deven used a couple of minutes ago about it being really undesirable to go with the solution of just leaving everything out.

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

Yeah.

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

So, it's really important too.

Paul Egerman – Businessman/Entrepreneur

Okay.

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

And we should make sure to capture that.

Paul Egerman – Businessman/Entrepreneur

I think that's helpful, that makes sense also, but great, good comment, Leslie.

Gayle B. Harrell, MA – Florida State Representative

Perhaps you all could draft something and send it out by e-mail?

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

Yeah, we will – that is exactly what we're going to do.

Paul Egerman – Businessman/Entrepreneur

And that's a good comment, Gayle, because we haven't as we've been answering these things we have been sending out the e-mails, we haven't been getting a lot of comments, my guess is on this issue we'll get a lot, but we really would welcome...in other words, we're not wordsmithing on these calls but any wordsmithing you want to do we should be doing it in the e-mails.

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

Yeah and we'll get some language out to you all to consider on this one.

Paul Egerman – Businessman/Entrepreneur

So, on scenario number two we also have this last bullet entities may use a service to fulfill the obligations, I just want to make sure I'm capturing correctly what I heard, the sense I heard from people is that's okay.

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

Yeah, we can – it's going to get folded in when we wordsmith it to the concept of having mechanisms to communicate, you know, what's needed in terms of consent, authorization or subsequent restrictions on the data and, you know, being able to ... and there being sort of multiple sort of pathways to potentially satisfy that including use of a service, but it's a little – I mean, what I thought I heard in our discussion was that folks felt it was really premature to be landing on one particular technical capability to do this but to leave room for...you know, we do need some technical capacity that this is maybe not a one-size fits all circumstance and that might be room, ample room for innovation here. I mean, that's what I thought I heard, that's what I put down in my notes, but we didn't spend a lot of time talking about that particular aspect of it.

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

This is Wes, rejoining the call are we still on – is the slide that's on the website the current slide that we're talking about?

Paul Egerman – Businessman/Entrepreneur

Yes.

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

Yeah, but we're not, we're not ... we've sort of ...

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

Okay.

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

Where the consensus is lying is not necessarily captured in the sentences you're going to see on the slide unfortunately.

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

Yeah, all right, okay.

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

We just couldn't make any progress without you Wes.

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

Yeah, yeah, yeah glad to know I can stimulate people to get something done by boring them.

Paul Egerman – Businessman/Entrepreneur

So, Deven, where are we then on scenario 2? Do you want to talk about this some more or ...

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

Well, no, I think we've got to get some language out to folks to take a look at and this is going to have a lot more words in it than what is on the slide given all the considerations of the more sort of complete discussion we want to have about this with the Policy Committee, but we'll try to turn that around relatively quickly this week so you guys can take a look at it and then we might be able to start teasing out some thoughts on scenario three.

Paul Egerman – Businessman/Entrepreneur

Yes, why don't we ...

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

We weren't sure whether we would be able to.

Paul Egerman – Businessman/Entrepreneur

Give it a shot, so, do you want to do this Deven or do you want me to do it?

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

Sure, I mean, I'll just tee it up, we didn't really have any straw responses here so just a reminder to folks that scenario three is a bit different because it's non-targeted query meaning you don't necessarily know who has treated the patient in the past and you're making a query for patient data based on patient attributes and trying to sort of find where their records might be located as a query mechanism and so, you know, the way we have it framed on the slide is that, you know, certainly you'll have to have some capability to look for the patient's record based on information that you have about the patient so either that's what's frequently called a record locator service or what maybe PCAST framed as a data element access service given their particular model or I've also heard it called a mater patient index maybe there are other terms for it.

And so, you know, two questions that occurred to us in sort of preparing the materials are one, should patients have meaningful choice about whether or not they are included on some sort of index list, is that distinct from triggers for meaningful choice where the provider does not have discretion to release the records anymore, because what's being listed in the query is not necessarily the record but some basic information about the patient and where their records might be located.

And then the second question is should there be some limit to queries? In other words, you can't query the whole list but you could query by geography unless of course the list was limited by geography such as a state-based list at an HIO for example. You know, some of the, you know, some of the networks that have established this capability, you know, the queries are limited by, you know, to participants in the network or may even be further limited.

I know, certainly, you know, we have Judy on the phone who can talk about how Epic handles queries by patients, you know, based on patient data and then we have Kitt on the phone who can talk about, you know, how they do it in eHealth Exchange.

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

So, Deven, I want to suggest that you're asking the wrong question or you're asking...

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

Oh, okay.

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

Two questions rolled into one, two good questions that are co-mingled unnecessarily. So, to me this is, at best it's indirectly targeted query rather than non-targeted query, but I would suggest that it's actually still targeted query the only indirection is that you found out where the target was through some means and I suspect that regardless of whether the patient tells you where their records are at or whether the patient pulls a list of paper out of his or her pocket and says, my doctor gave me this list to give you, this is the list of places that he knows where my records are at or whether they looked it up on a service somewhere it doesn't really much matter from the point-of-view of the targeted query, once the targeted query proceeds, regardless of how you knew where to target it, it follows the rules that we've been talking about in cases one and two.

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

In other words...

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

This is decoupled.

Paul Egerman – Businessman/Entrepreneur

This is Paul, that's a good comment, David, however, the very first question that Deven mentioned, which I think we already answered is does listing the record in this sort of directory kind of service is that a meaningful choice for the patient, so you have to explain it to the patient in advance and make sure that they understand it before they get listed.

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

And I certainly think that's a really important question, I'm just saying that's different from targeted query.

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

I really think we're harboring some semantics here. If you think of the query as being the actual request and exchange for health information then this scenario could be referring to a front end query for patient location or something.

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

Right.

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

But you could also just bundle things differently and have this non-targeted query mean a sequence of queries that includes finding the patient's data, which is how we've been using the definition of targeted query up until now.

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

Right, but it's still – I'm just suggesting that it's still a targeted query once you actually do it.

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

I agree, however, I'm just questioning whether we want to go back and rework our definition of non-targeted query or we want to live with a particular way the pieces have been put together here.

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

Well, to me a non-targeted query would be where you broadcast out a search across sites and you pull back all sorts of stuff. I mean ...

Paul Egerman – Businessman/Entrepreneur

And also I don't, this is Paul, I don't – we're running a little short on time and I don't want to wordsmith it. It does say in the beginning part of the ...

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

Well, but ...

Paul Egerman – Businessman/Entrepreneur

It does say in the beginning part of bullet it says the providers are not specifically known.

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

Yeah.

Paul Egerman – Businessman/Entrepreneur

So, you're doing something to find out where the data is.

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

Right, yeah.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

You know ...

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

So, let me – go ahead, Deven.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

You know the name of the patient is that right?

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

No.

Paul Egerman – Businessman/Entrepreneur

That's right.

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

Yeah, you have, yeah you have data about the patient.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

So, it's targeted in that it's – you know the name of the patient but you don't know exactly where their data are.

Paul Egerman – Businessman/Entrepreneur

Right.

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

Right, so, let me ...

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

The patient could have seen ...

Paul Egerman – Businessman/Entrepreneur

Go ahead, Wes.

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

List of stuff.

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

Yeah, once, at some point you'll know where it is.

Paul Egerman – Businessman/Entrepreneur

Go ahead, Wes.

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

Yeah, but this really is David focusing on the query to find the patient's records.

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

So, that's ...

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

Right, so we rework the slides to give this a different name, but I'd like to ask a question just about this. Is this any different in what we might say than what we would say about a health information exchange? I mean, I just wonder if we have some existing work around health information exchanges, because I don't really see any difference here between what we're describing which is a query to find out where a patient is and then a query to get data from those sources then at least one model that health information exchanges use.

Paul Egerman – Businessman/Entrepreneur

Yes, this is Paul ...

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

This is Leslie, this is Leslie Francis, we heard from significant – at NCVHS testimony about queries to find where a patient is being used by stalkers, now I know that there are of course issues that you want to make sure that the person who makes the query is authorized at the front end.

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

Yeah.

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

That was the – the worry was – and there were actually – the domestic violence people actually gave us testimony about the use of medical records to locate estranged spouses where say the name of the spouse was known or the name of the children and they could find...you could find the location of the person through getting the medical records.

Paul Egerman – Businessman/Entrepreneur

Yes, this is Paul, that's an excellent comment, Leslie, and so the first question again that Deven asked is does this scenario three involve meaningful choice on the patient in effect before the patient is listed in whatever directory service it is and picking up on what Wes said is this is very similar what we said when we were talking about Directed Exchange through HIOs and, you know, my answer is, yes it involves meaningful choice on the part of the patient and it's almost similar to the old days when, you know, when you moved and you got a new apartment, and you ordered a telephone there was a decision as to whether or not you would be listed in the telephone directory and there might be reasons why you didn't want to be listed in the telephone directory and so as a patient there might be reasons why you don't want to be listed in whatever directory the provider is participating in. So, there should be some meaningful choice about that.

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

Yeah.

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

Right and this is Kitt what we do or the discussion we could move to is couldn't a requester use a provider directory to locate the data holder and direct the query to the HIE that has that provider.

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

No.

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

Well, you could if you knew who it was, Kitt. I think what we're trying to say in this circumstance is that you don't know.

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

But a lot of times with provider directories is...there are different ways, I mean, often a person will come in for SSA and just not know the name of it but know they went to this corner clinic or something that's in this area and there are searches that you can do based on the depth of that provider directory.

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

Right, but the provider directory won't know about patients so that's not really relevant to this question I don't think.

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

Well, I think Kitt seems to be suggesting that we just do away with the ability to query for a patient by name and demographics in favor of a more elaborate provider directory. I don't want to put words in your mouth, Kitt, but that seems to be the direction you were going.

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

Yes, it is.

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

I think that my feeling right now is that it would take a lot of persuading to do away with the ability to query on – I mean, there are problems that definitely have to be addressed, but it would seem to me that the – you know, just situations where patients, "Well I know it was a hospital in Berkeley," you know or, you know, it was, "I can't quite remember the doctor's name but it was something like this and it had something to do with heart disease" you know, I just think that we would have to go a long way to give up on the notion of searching for a patient by ...

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

Right and this is Kitt. Wes is really describing it; it really depends on the information at hand and kind of a combination of both areas that I'm talking about.

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

Yeah, but for this discussion I just think we should...Paul just called the question on the first bullet. I mean, is there anyone, not to take Paul's role, but I'm arguing that...

Paul Egerman – Businessman/Entrepreneur

You're doing a good job Wes.

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

You should call it ...

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

You're doing great, Wes, go for it.

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

Yeah. I mean, does anyone disagree with the first bullet?

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

Well, so let me – I want to just ask for a clarification, essentially you're saying meaningful choice however implemented whether that's opt in, opt out or some as yet un-opted opt option is required if you are listed in some aggregator service, which would be true of this service as it is of HIEs?

Paul Egerman – Businessman/Entrepreneur

That's correct.

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

Yeah.

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

Okay, I'm with you.

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

Essential.

Paul Egerman – Businessman/Entrepreneur

So, we have an agreement on the third one.

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

We do, it sounds like we do.

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

Yeah, I think that's good if you say aggregated service, because I think that's a key modifier.

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

Yeah.

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

Well, what do we mean by aggregated service? Why is that key for you Judy? I want to make sure I understand.

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

Because if the patient says "I'm going to this particular place" that's not an aggregated service.

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

Oh, yes, that's right, okay.

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

Yeah.

Paul Egerman – Businessman/Entrepreneur

That's right.

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

Yeah, we're talking really about rules that apply to a different role here, the role. I mean, it applies to people who contribute to an aggregated service but it also applies to the aggregated – well, nevermind.

Paul Egerman – Businessman/Entrepreneur

So, we came to agreement on the first bullet.

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

Yes.

Paul Egerman – Businessman/Entrepreneur

Now on the second bullet, so again, we're talking about the scenario three, we came to an agreement that, gee the patients have to have meaningful choices as to whether or not they get listed in the, basically the white pages, the telephone directory of health care.

And then, the second bullet is, David McCallie made an interesting comment he said, well once you've gotten past that point and the patient is listed and you're using this record locator service or whatever it is and if that's gone forward everything else we said about targeted query should apply.

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

Right.

Paul Egerman – Businessman/Entrepreneur

And we don't have to say anything else.

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

Right.

Paul Egerman – Businessman/Entrepreneur

And do we agree with that?

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

I would certainly agree with that, but I don't see how that's relevant to the second bullet.

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

Well, so let me just explain where the second bullet came from, it was pulled from a couple of examples where you're sort of not allowed to query the whole list like you can query within reasonable geographies of where the patient is located and I wondered if folks felt more comfortable with that model from a policy stand-point versus, you know, being able to query to sort of do a general query by patient for whomever might be, you know, in that database meaning, you know, whatever providers are sort of linked into that, right? Because, you're still going to have to do a query for records even once you find out where they are.

Paul Egerman – Businessman/Entrepreneur

So, it's another way to phrase it.

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

Maybe it doesn't matter.

Paul Egerman – Businessman/Entrepreneur

Another way to phrase it is does the existence of a record locator service indicate that there has to be some additional policy or restrictions on...

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

Limits.

Paul Egerman – Businessman/Entrepreneur

Or limits on queries.

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

Absolutely.

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

I think I heard Gayle and I about to agree that the answer was no but I'll let Gayle.

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

Well, we did though – keep in mind that we have limited the scenario to direct treatment purposes.

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

Yeah.

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

So, you're not supposed to be able to query for any purpose under the sun.

Paul Egerman – Businessman/Entrepreneur

If its Direct Treatment, you know, is there any ...

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

We haven't discussed other scenarios yet, but in this scenario I think that just trying to establish what the limits would be could occupy us for a long time and most of the situations that lead to abuse are going to happen locally as well as they're going to happen nationally, so, I just think that we may be able to get to a "no" and complete this if we do it really quick.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Well, this is Dixie, I agree with a "no" on the second one, however, the previous comment about the fact, asserting that this was equivalent to the previous question I disagree with, because to me this one would allow a federated query across multiple organizations that expose their record locator services, etcetera, and my understanding was the first two were about querying one specific entity.

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

I would – I think I would agree with Dixie, although I don't think that would change my answer to bullet number one.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

No, no it wouldn't I was just saying someone, I think Paul said, well and David said, well isn't this equivalent to the first two.

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

Well, I think aggregated, aggregated use of the word aggregated in the main bullet helps there.

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

But if you – so, Dixie, the reason I think that's not a terribly relevant distinction is, I mean, in other words it's technically relevant but not policy relevant. Let's say that the record locator says there are interesting records at three locations you could technically fire off all three of those queries at once or you could fire them off in succession or you could fire off one read it and then fire off the second one, and I don't think that makes much difference.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Except that the response is aggregated.

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

No, the response has come back – I'm assuming the response has just come back, you know, there's a – it's like, you know, you'd have three mails in your in-box if you would, three queries to go, three responses to read in your in-box.

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

I would say we haven't established ...

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

Yeah, how you summarize the data.

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

Yeah, right.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Yeah.

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

Yeah.

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

... independent question, but ...

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Yeah, it depends on how it's implemented.

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

Yeah.

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

But it's a series ...

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

But, I think it warrants a separate consideration as Deven and Paul are doing here. I don't think we can just throw it...

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

Well, let's say we all agree on that.

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Okay.

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

So, then we want to add aggregate to the top bullet and we want to say “yes/no” – are we all agreed on that?

Dixie B. Baker, MS, PhD – Martin, Blanck & Associates – Senior Partner

Where did you put aggregated?

Paul Egerman – Businessman/Entrepreneur

Somewhere in the top bullet.

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

... as aggregated piece of listing service or something like that.

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

In a service that performs aggregation of data such as a record locator service an HIE or other such services. So, we are agreeing to that yes and then I think we're – I'll vote my no on the second one. No, that the queries don't need to be limited in any way other than the kinds of things we've already talked about, you can't go fishing, it's direct treatment, blah, blah, blah.

Paul Egerman – Businessman/Entrepreneur

Now, is there anybody who has a different answer for that second bullet?

Gayle B. Harrell, MA – Florida State Representative

I have a bit of a concern on the second bullet, this is Gayle, I think it needs to be narrowly done, minimal necessary kind of thing and every time you go fishing in a large pool of record locator service you are exposing perhaps records of other people who you may have, you know, 20 Jose Gonzalez's out there and you're exposing all those records without the need to do so. If you have some parameters established by the patient, you know, I was in Chicago and, you know, it may be a doctor there or I was here, or there, you need to limit the target that you're searching.

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

That's the whole point of a record locator service is to give the physician plenty of confirming information before he accesses the record with the direct targeted query.

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

Well, right, but I think Gayle's point is that just the mere revealing that there was a Jose Gonzalez in this location, that location, that location, that location isn't that revealing even though you don't know the details of the care.

Paul Egerman – Businessman/Entrepreneur

I'm going to interrupt because we're just about out of time and so I'm trying to understand where we are on this second bullet do we have a consensus or no, or is it incomplete?

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

I think it's incomplete. I think we need to wordsmith the previous part and sort of get some feedback from the Policy Committee, but we're likely going to need to come back to it.

Paul Egerman – Businessman/Entrepreneur

Okay, that's great, well this is terrific progress.

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

Yeah, everyone did such a great job, thank you everyone.

Paul Egerman – Businessman/Entrepreneur

Yeah, it's still worthy of another virtual victory and a fist pump.

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

I'm virtually exhausted from the virtual victory lap.

Paul Egerman – Businessman/Entrepreneur

Everybody had gotten their intellectual exercise for today if you did your victory lap as fast as I did mine.

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

Well, we can all go out and eat chocolate.

Paul Egerman – Businessman/Entrepreneur

Dark chocolate.

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

Oh, I like that idea.

Paul Egerman – Businessman/Entrepreneur

So, let's open our line up for public comments.

Public Comment

MacKenzie Robertson – Office of the National Coordinator

Operator can you please open the line for public comment?

Rebecca Armendariz – Project Coordinator – Altarum Institute

If you would like to make a public comment and you are listening via your computer speakers please dial 1-877-705-2976 and press *1 or if you're listening via your telephone you may press *1 at this time to be entered into the queue. We have no comment at this time.

Paul Egerman – Businessman/Entrepreneur

Great, well, terrific call today, thank you all very much.

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

Thank you, thank you Paul and Wes, and David, and Gayle and everyone great call thank you.

Paul Egerman – Businessman/Entrepreneur

Thank you.

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

Bye.

MacKenzie Robertson – Office of the National Coordinator

Thanks everybody.