

**HIT Policy Committee
Privacy & Security Tiger Team
Transcript
February 21, 2013**

Presentation

MacKenzie Robertson – Office of the National Coordinator

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 and this is a public call and there will be time for public comment at the end of the agenda, and the call is also being recorded and transcribed so please make sure you identify yourself when speaking. I'll now take roll. 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/Software Entrepreneur

Here.

MacKenzie Robertson – Office of the National Coordinator

Thanks, Paul. Dixie Baker? Neil Calman? Judy Faulkner?

Carl Dvorak – Epic Systems – Chief Operating Officer

Carl Dvorak here for Judy.

MacKenzie Robertson – Office of the National Coordinator

Hi Carl. Leslie Francis?

Leslie Francis – University of Utah College of Law

Here.

MacKenzie Robertson – Office of the National Coordinator

Thanks, Leslie. Gayle Harrell?

Gayle B. Harrell, MA – Florida State Legislator

Here.

MacKenzie Robertson – Office of the National Coordinator

Thanks, Gayle. John Houston? David McCallie?

David McCallie, Jr., MD – Cerner Corporation

Here.

MacKenzie Robertson – Office of the National Coordinator

Thanks, David. Wes Rishel?

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

Here.

MacKenzie Robertson – Office of the National Coordinator

Thanks, Wes. Latanya Sweeney? Micky Tripathi?

Micky Tripathi – Massachusetts eHealth Collaborative

Here.

MacKenzie Robertson – Office of the National Coordinator

Ah, Micky, great. Kitt Winter.

Kitt Winter – Social Security Administration

Here.

MacKenzie Robertson – Office of the National Coordinator

Thanks, Kitt. Okay, with that I'll turn it back to you Paul.

Paul Eggerman – Businessman/Software Entrepreneur

Great; thank you very much MacKenzie and thank you to the members of the Tiger Team on this call. I also want to thank any members of the public who might be listening to the call. At the end of our call we will have an opportunity for public comment. Comments from the public are extremely important so I hope that you will take a minute and give us your reactions.

We have an interesting and exciting topic to discuss today. I just want remind everyone the Tiger Team is a sort of interdisciplinary group of people that makes recommendations to the HIT Policy Committee. So, our goal is to make a recommendation to the Policy Committee and as you can see on the screen here is the topic that we are discussing.

We are refocusing our discussion around query response scenarios. A query response scenario is when somebody of one healthcare organization asks a question or does a query to an electronic health record located at a different organization or different institution and hopefully gets a response. So, we are going to refocus our discussion around some specific scenarios for that process.

We are going to review the scenarios and hopefully develop some policy recommendations and we have a schedule. We have 4 meetings including today's meeting to discuss these topics and to wrap up our discussion. We want to wrap up our discussion by the end of March so that we can be making recommendations for the April HIT Policy Committee.

So, that is the agenda and unless people have any questions on the agenda I think Deven now is going to take us quickly through some background and we'll dive into the scenarios.

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

Okay, thanks, Paul. We've been on this query topic for a couple of Tiger Team meetings now and towards the end of our last call I think there was a collective desire to sort of try to find a way to focus our discussions a little bit better around some specific scenarios and it just so happened to coincide with some discussions that were taking place within the Office of the National Coordinator for Health IT on the same topic and they had already defined a couple of scenarios that they were looking at and so we thought it made sense to try to be moving consistently along the same pathways in terms of use cases when query is likely to arise and what are the policy implications that arise and to what extent do we have policy in place already and where are the gaps that need to be filled in.

And so, just as sort of reminder of the landscape from a legal stand-point that we stand in with respect to this issue, is, you know, we have law on this topic already, right? We have HIPAA and other laws like State Medical Privacy Laws and Federal Regulations that govern substance abuse treatment records that regulate the circumstances under which a provider can disclose identifiable, i.e., protected health information and that would include disclosures of PHI in response to a query or request just as it applies to disclosures that are initiated by the data holder.

So, while we may not have law that regulates what you can ask for we do have law on the other end that regulates the circumstances under which the information can be disclosed. And we also know from our previous discussions that except in circumstances where there might be laws that expressly require disclosure like public health reporting laws just as an example. The rules generally will create permissive circumstances and permit disclosures for certain purposes and subject to certain processes, but they don't require providers to release PHI.

Again, there are circumstances where it's required but for the most part it's permissive and some of the most common permissive disclosures that we deal with on a regular basis are those for treatment, payment and operations.

So, given that we have this set of laws, you know, I think from the very beginning we've said, you know, that we're not attempting necessarily to alter rules, at least I don't think we are, that vest providers with the responsibility to share patient information in a responsible way and consistent with law that applies to them whether it's HIPAA, whether it's a state law, whether it's federal substance abuse treatment law, you know, that governs them and the conditions under which they can disclose.

So, in some respects our goal is really to take a look at what might be the potential real or perceived barriers, some of which may be clarification regarding liability of releases of data in response to query that will enable providers to respond to queries in ways that are consistent with their professional obligations as well as the law.

And so now we get to the sort of scenarios that we're using to help guide our discussion, keep us focused and be consistent with some of the discussions that are going on within ONC and they include the following three scenarios and we're going to try to tackle them in this order building on what might be the most simple case from a relative stand-point to ones that are slightly more complicated.

So, the first scenario is what's now increasingly being called targeted query for direct treatment where HIPAA controls because you don't have a particular type of data that might trigger greater protections or you're not in a state where greater protections apply even to non-sensitive data and we'll talk in a minute about what we mean when we use the term targeted query.

The second scenario would be also targeted query for direct treatment but the data is covered by a more stringent privacy law either at the federal or the state level and then in the third scenario is non-targeted query.

So, what do we mean when we say targeted query for direct treatment purposes? And essentially the fact that makes this targeted is that you know who you're asking for the record from, you're targeting a specific provider for the record because you have been told, for example by the patient, that this is the previous provider that I've seen or this is my primary care physician and so you at least know the name of the provider that you're aiming at, you might not necessarily know their particular digital or electronic, or direct address, but you know what you're looking for and so that's what is the distinction between a targeted query and one that's not targeted where you're looking for a patient record but are not exactly sure where that record might be.

Direct treatment is distinguished between indirect treatment both of which are defined terms in HIPAA. Direct treatment is a treatment relationship where you are as the provider treating the patient in the process of treating the patient or preparing for a treatment visit with a patient.

Indirect treatment is where you might view records as a provider on a consulting basis. The patient is not your patient but you're being asked to take a look at some records in order to provide a consult to another provider, both of those forms of treatment are considered to be treatment under HIPAA in terms of being regulated as TPO.

We're going to focus for our discussion on direct treatment where the provider making the query is either in or is preparing for having a direct treatment relationship with the patient and is querying another provider where the records presumably reside.

David McCallie, Jr., MD – Cerner Corporation

Deven, can I ask a ...

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

Yes?

David McCallie, Jr., MD – Cerner Corporation

A clarifying question?

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

Sure.

David McCallie, Jr., MD – Cerner Corporation

By the way, this is David, and this is an extremely helpful outline, this is a great way to start this.

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

Thank you, thanks, David.

David McCallie, Jr., MD – Cerner Corporation

Yeah, because boy we can get tied in knots. Your point here it says Patient Z advises provider that patient had been seen by Provider B for treatment and so forth. Is your definition so narrow as to require that this information comes from the patient or could it come from some other source but the net effect is that the provider knows who the other provider is and that they have a relevant record?

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

I think the latter is true, but given that we got some help from ONC in trying to match our query scenarios with ones that they've been chewing on it's do we have Kathryn or Joy or someone who can clarify that for me?

David McCallie, Jr., MD – Cerner Corporation

And let me be more precise in a concrete use case, let's say the patient is unconscious in an emergency room and there is some kind of encounter locator service or record locator service that knows that the patient has been previously seen for example in there, you know, medical home a week ago and that the provider then directs the query there to get the patients background.

Paul Egerman – Businessman/Software Entrepreneur

David, I think that's more scenario three where there is a record locator that is being used.

David McCallie, Jr., MD – Cerner Corporation

Okay, you mean the non-targeted query?

Paul Egerman – Businessman/Software Entrepreneur

That's correct.

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

I mean, it almost sounds, David, like yours start non-targeted but ends up targeted through use of a record locator service.

David McCallie, Jr., MD – Cerner Corporation

Yeah, so what if the patient has it printed in their wallet and you pull it out of the wallet. I mean, I'm not clear when the boundaries – well, let me back off, I don't want to go too deep.

Paul Egerman – Businessman/Software Entrepreneur

Yeah and I think as we go through it, this is Paul, some of your questions will be answered. There is – it is important that Deven made the comment that it's possibly a scheduled appointment so it is a possible a visit or a scheduled treatment service so it's possible that the patient is not present when the query response activity is going on under scenario number one and David's question is a good one. There could be situations where the knowledge doesn't necessarily come directly from the patient.

For example, if you have a patient who is scheduled to be transferred from an acute care facility to an extended care facility. The extended care facility could be expecting the patient and could possibly be involved in a query response about that patient.

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

Right.

Paul Egerman – Businessman/Software Entrepreneur

So, I think David raises a good issue, so it's really an issue that Patient A has knowledge, I'm sorry Provider A has knowledge that Patient Z has been seen by Provider B and has knowledge that there is a record there.

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

Yeah.

Paul Eggerman – Businessman/Software Entrepreneur

So, it may not always be coming from the patient, but it's also – it's an interesting nuance, but why don't we continue ... we might want to change this a little bit later, continue on through this scenario.

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

Can we make a note to update the ...

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

Yes.

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

All right, great, thanks.

Paul Eggerman – Businessman/Software Entrepreneur

So, it's really Provider A has knowledge possibly from the patient or possibly from the other provider.

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

Right. I think that's right and we'll leave the sort of record locator service scenario to scenario three.

Paul Eggerman – Businessman/Software Entrepreneur

That's right.

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

So, just to keep it clean, but that's a really good set of clarifying information and we'll fix that on this to make sure that we stayed focused, always good. So, you know, again, so what we tried to do in the first instance is say, look, given that we do have existing law here, in that type of scenario, scenario one what do the existing obligations mean for these two providers, the requester Provider A and the data holder Provider A?

Well, you know, Provider A, you know, they need to sort of demonstrate that they are Provider A through identity credentials and in some way demonstrate the treatment relationship. I want to go through all of these just as a whole and then just sort of start to introduce some of the questions that arise, but this is sort of a basic set of assumptions.

Again, if you can disclose for treatment purposes you've got to know or have some reassurance that in fact you're disclosing to the person who's requesting, the right person and, you know, that there is a treatment relationship there.

So, you know, in terms of the requestor what they have to sort of demonstrate in some way and this some way is what we're going to talk about, is you know, they are who they say they are, they are treating the patient or will be treating the patient and, you know, enough demographic information to enable the data holder to locate the record.

Again, you'll see in the sort set of questions that we raise, you know, there may also be scenarios where the requestor actually has the opportunity to try to locate the record, but that's...when we get to that spot we'll talk about those possibilities.

The data holder is the one who actually has the liability for disclosing the data, so they're the ones that are going to need some reasonable assurance about the identity of the entity on the other side of the query, some assurance that in fact if they're disclosing this for treatment purposes there they were right to do that or is there reasonable reliance on whether it's attestation or however that's demonstrated was in fact reasonable.

They then make the decision, again, it's their liability with respect to the disclosure, they make the decision about whether to release the data and if so what is the data again consistent with their legal obligations. And if in fact they're responding they need to send the data back for the right patient and of course properly address the request and send it consistent with HIPAA Security Rule obligations.

Paul Eggerman – Businessman/Software Entrepreneur

So, I have a comment about that.

David McCallie, Jr., MD – Cerner Corporation

Deven?

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

Yeah, here it comes.

Paul Egerman – Businessman/Software Entrepreneur

This is Paul, but I think somebody else had a comment want to let that one go first?

David McCallie, Jr., MD – Cerner Corporation

David has a question. Could you make the slide go back one?

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

Yes, sorry.

David McCallie, Jr., MD – Cerner Corporation

And it's a picky one, but I think it matters actually in the long run. Your point one, sub point three there, must include patient demographic information to enable data holder to locate the record. Would you accept an amendment that it must include identifying information, it might be strictly speaking demographic? In other words it might be a shared medical record number?

Paul Egerman – Businessman/Software Entrepreneur

Yes.

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

Yes.

Paul Egerman – Businessman/Software Entrepreneur

Yes and Deven I had a comment too about existing obligations.

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

Yes?

Paul Egerman – Businessman/Software Entrepreneur

This is Paul again, which is the requestor Provider A, if Provider A gets access to any information, medical information I think Provider A has to somehow consume that information in their own electronic health record, in other words they have to indicate in their record for example if they see laboratory results that they reviewed the laboratory results as part of their, you know, as part of their process. In other words they can't just look at it in another record and not make any notation at all in their own record as to what happened.

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

Well, that Paul actually depends on whether they end up using that information in treating the patient. What has to be documented in a medical record is actually not something that HIPAA controls as a privacy and security matter but is more a matter of sort of what goes into the legal medical record.

So, decisions about whether you actually consume the information or make note of it in the record either by, you know, the data is computable and you can incorporate it or you make a separate note that you've seen it depends on whether you actually end up using that information for treatment purposes and correspondingly feel like that needs to be noted in the medical record, but that's separate from HIPAA.

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

This is Wes ...

Leslie Francis – University of Utah College of Law

This is Leslie, just quick comment, I also think we need to make sure to clarify that this is the simple situation not the more complicated situation in which there might be questions about particular types of data.

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

Well, that's right and that's why that specifically scenario two.

Leslie Francis – University of Utah College of Law

Exactly, I know, but we need to clarify that this is scenario one and that that's what it means ...

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

Okay, fair enough, we can put scenario one in the title. Paul, did that make sense? I didn't want to ...

Paul Egerman – Businessman/Software Entrepreneur

Yes, thank you.

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

Gloss over your point. Okay.

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

This is Wes, I assume we've gotten to that stage of the meeting where we're going to comment, is that by default at least?

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

Yes.

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

So, I'm going to make a comment and then I'll tell you whether I agree with it or not.

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

Okay.

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

The thing that was raised by this discussion about the medical record was we are being very nonspecific about the kind of data that might be sent by the record holder, we're not saying that it's a patient summary, we're not saying that it's a dump of all the data that you have, we are being, we are assuming that whatever we agree on here applies to any response that is protected health information about the patient, right?

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

Well, that's right, because we are presuming that the legal obligation to make the determination of what gets disclosed is on the data holder.

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

Yeah, okay, I just think, I don't know that we need to alter the wording anyway, but I think we need to keep in mind as we all think about specific scenarios in our head that are often more specific than the one we have documented here and, you know, whether something has been looked at and acted on or not is an assumption about what kind of data is being provided that as far as I know we're not making that assumption.

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

That's right; we're not making that assumption.

Gayle B. Harrell, MA – Florida State Legislator

Deven, this is Gayle, I have a question also?

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

Yes, Gayle?

Gayle B. Harrell, MA – Florida State Legislator

Now, we're not talking about authorization as far as specific types of data in this?

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

No that's scenario two, Gayle.

Gayle B. Harrell, MA – Florida State Legislator

Okay, because of course states vary as to what kinds of authorizations are required for very specific information.

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

Yes, that's right, that's why we created a separate scenario for those types.

Gayle B. Harrell, MA – Florida State Legislator

Right, okay, I'm fine then.

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

Okay, great. All right, so, you know, just mapping out sort of what the basic legal obligations then translate into in terms of a set of steps that are taken doesn't, you know, brings up a lot of questions as we've begun to ask, right? So, what we tried to do in the next set of slides and what's also in the paper, the text document if you had a chance to open it up and look at it, are a set of sort of questions that come up.

So, you know, again, given that the discloser, the recorder holder has the legal authority to disclose patient data for treatment purposes, PHI, but, you know, you have the provider on the opposite end and needing to know sort of what, you know, that you're giving it to the person is who they say they are as well as treatment relationship, again, we had to sort of set a relevant questions. And I just want to sort of go through all of them so you see the landscape and then we will come right back and start to tackle them.

So, what for example constitutes a sufficient identity credential to justify reliance given that this is coming as a query and it's electronic?

What constitutes sufficient assurance of a treatment relationship to justify reliance on the part of the data holder?

Does it matter if the data holder is in fact making a human decision to disclose on a query by query basis or if the data holder's response is in some way automated, such as to be set by the data holder or automatic by participation such as in a network and those are just sort of two examples of the way an automatic response might require, but it's worth a discussion and it's one that we began to tackle in some previous calls but didn't quite get to resolving is this sort of automated piece of this and what that means from a policy stand-point.

What information about the patient should be presented as part of the query? And again, the data holders are responding consistent with their professional and legal obligations, but is there anything that we want to say specifically about that response from a policy recommendation stand-point?

And then the last relevant question is should there be a requirement to account for and log the query and the disclosure with the capability to share this with the patient upon request?

And those are just sort of six areas that even in the most basic model come up and to the extent that there are, you know, that these legal obligations exist on both ends and there may not be a lot of clarity about what's sufficient to justify reliance it feels like we could make some progress on this issue by putting forth some policy recommendations, but that's certainly the hope and that's why we have been struggling on these calls now for a couple of months to try to pin this down.

Is there any set of questions that we missed in this list?

Kitt Winter – Social Security Administration

This is Kitt, the one thing under the question number one I'm wondering do we also want to address the issue of do we have a common trust framework in which certificates from whichever mechanism that we use Direct, Exchange, Blue Button, etcetera are compatible with each other? I think compatibility across all of these different frameworks would be an important thing.

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

Yeah, if we're going to start discussing one rather than asking about missing questions.

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

Yeah, well, right, I mean, I suspect that might have been in the context of whether that needed to be a separate question.

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

I see okay, thanks.

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

Yeah, I think to the extent that we need to address it at all it would fit under one, I'm not sure we do, but I think it fits under one.

David McCallie, Jr., MD – Cerner Corporation

So, I have another one, I agree that that fits under one, another one that maybe slightly antecedent but it's a general question. We have not mentioned any notion of patient consent, are we purposely ...

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

We're strictly looking at what the legal obligations require of the simple scenario and what that means for, you know, sort of a set of policy recommendations that might potentially be needed to fill the gaps. We do in a couple of places with respect to these relevant questions mention whether some sort of patient consent or assent that isn't required but might be part of a query that might support for example maybe the reliance on credentials or the treatment relationship, that that might suffice as something that a provider could rely on. But, because consent is not legally required in scenario one it's not a separate relevant question.

David McCallie, Jr., MD – Cerner Corporation

Okay, so, we might come on some cases where the existence of said not required consent might make a difference in how you respond?

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

That's something that we should talk about, yes.

David McCallie, Jr., MD – Cerner Corporation

Okay.

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

So, I am going to propose a possible other question.

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

Okay.

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

I think the answer is self-evident, it doesn't belong, but I want to bring it up just in case and for a reason. What standards are required to enable this – the process that we're describing as policy here or that we're creating a policy for? I believe the immediate answer is no that's not a question for this group, but I did want to raise it and I wanted to ask how that applies to this number one? I mean, we're beginning to get into standards already in number one.

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

Yeah, so we – I think we always have to be very careful since standards isn't in our purview, right? To be talking about ... you know, initially I toyed with having sort of a parking lot list of sort of technical capabilities or standards and I was a little worried that it could be distracting to trying to focus on policy. I think we need...we always need to stay focused on policy but to the extent that we are aware of absence of standards or technical limitations that won't be able to allow us to get a certain policy done that's absolutely relevant to the conversation.

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

Yeah, okay, well, I mean, one of the reasons I'm focused on this point is that it's been through these discussion and some sort of outside research idea that I've become aware of the difference between directed query and direct, okay? I kind of had the two fused together in my mind, because they sort of came about by parallel in coordinated processes, but if you look at the current transaction flow in the United States there is, you know, somewhere close to 100 million transactions that are valid under the directed query policy and a very small percentage of those actually used the direct protocol.

In other cases there are private arrangements between major labs and recipients and things like that that handle the standards part. And I want to make sure we maintain that same modularity in our discussions here that if – it seems to me we ought to be able to come up with a set of policy that would enable, provide that virtual safe harbor for arrangements whether they are using specific standards or not. We may believe that the use of the standards greatly enhances the scalability or other features around the use of this, of what I guess we're calling target, well it's targeted and non-targeted query, so we might call it, I don't know what we'll call it, but that's irrelevant.

I just think we want to be careful to think policy that supports multiple implementations rather than fuse policy with a specific implementation in our discussions.

Paul Egerman – Businessman/Software Entrepreneur

Wes, this is Paul, it seems to me what you've done, if I understood you correctly with your statement, is you've actually given an answer to question number one, which is what constitutes an efficient identity credentials and you're sort of saying a private arrangement would also constitute that.

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

Well, I think I've given part of the answer for number one, right.

Paul Egerman – Businessman/Software Entrepreneur

Yes.

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

I think that we should probably state what is expected out of a private arrangement or – you know, there's this term trust fabric that I've been trying to trace down. I think it's one of those phrases that nobody knows exactly what they mean when they say it but they think everybody else does.

Paul Egerman – Businessman/Software Entrepreneur

It's one possible response to question number one. So, let me just ask Deven, are we ready to dive into the questions?

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

Well, I think we are. I mean, well, I think – are folks – folks have sort of surfaced some issues that they want to make sure get put on the table and want to make sure that they're either represented in the existing questions or considered.

If there's no – this does not – we're going to go ahead and start diving is as I think we already have been. If in the process of talking about these relevant questions we discover another question it wouldn't be too late to add it as a separate category. I'd like to pick up the main ones basically.

And, Wes, I also think you're right. I mean ideally we created sort of set of circumstances that justify reliance ... and ideally they're not sort of one size fits all right? It's okay to use this pathway and that's what we want you to do, right? We create a set of policy circumstances that many sort of solutions could fit into.

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

Yeah, I don't have a...I mean, it seems to me like we're writing the functional specification for the technical standards.

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

Oh, well, we don't want to do that.

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

Various...did you say we do or we don't?

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

I don't think we do.

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

No, I think it's exactly what we want to do, but a minute is a figure of speech. We want to say, if you've got a technical solution here is the basis for judging whether it meets the policy requirement or not. So, that's functionally what does your technical solution do? But, it's – so, you know, if we were to say use of direct certificates is or isn't – if someone were to propose that the use of direct certificates was sufficient reliance we would have some set of bullet points to look at and see whether direct certificate met those bullet points and if so then it would justify reliance.

Micky Tripathi – Massachusetts eHealth Collaborative

I wonder, this is Micky, is it useful to break out the concepts of authentication and authorization here? Because, it may give us a little bit more precise way of tackling some of these. So, in this example, for example the use of a direct certificate would provide the authentication so I at least know that Provider X is, you know, according to the direct certificate is who they claim to be, but I still need to tackle the question of whether they're authorized to get that information whereas membership in a trusted network would actually solve both of those arguably depending on the nature of the network.

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

Well, I mean, that's why we have this separate question around assurance of a treatment relationship and it could be that an answer that justifies reliance fits in more than one category.

Micky Tripathi – Massachusetts eHealth Collaborative

Right.

David McCallie, Jr., MD – Cerner Corporation

Yeah, this is David; I think that the authorization is what is bound up in the treatment relationship statement.

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

Yes.

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

Now, I would argue not but I'm perfectly willing to defer that question until we get...let me just say why and then if we want to defer it that's fine. There may be, you know ... it seems to me that if I'm a record holder there are two things I want to know, one is do I trust ... one is I'm getting some assertion from this other requesting entity that there is a treatment relationship. I want to know that I got that specific assertion, it's probably wrapped up in the definition of what we do and then any kind of – but I want to know that and want to know that that is a place where if they send me that assertion I would accept it, okay?

In other words, I might be willing to say, well anybody who I have a business relationship with, because I've sent patients there before or anything like that, I trust or I might be willing to say anybody that some organization says is in fact a licensed provider that treats patients I'm willing to accept but it's a different question then, you know, does Sharp Institute have specific questions. I want – if it's Sharp Institute, you know, arguably that's a big entity I'd have it on some list anyways, but I just think there are two separate questions there.

David McCallie, Jr., MD – Cerner Corporation

But remember that, this is David, remember that we are assuming – I mean, we have to have technical means to keep people from lying and misrepresenting themselves and that's an important discussion, a technical discussion, but assuming that they're not lying you have a direct treatment relationship with the patient and that has led to information that a request needs to go out to the third-party.

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

So, a guy comes in the door with a tape recorder and a microphone and says "I'm Dr. Jones and I have a direct patient relationship with ...

Paul Egerman – Businessman/Software Entrepreneur

This is Paul, I just want interrupt this discussion. I think we can make – I'm looking at the clock and we're almost halfway through our call. I'd like to make sure that we go through some of these relevant questions and I think we can make good progress if we go through each question one by one and so I'd like to suggest, Deven, if this works with you that we see if we can answer the first question and then some of the issues that Wes is talking about I think will come up when we go to the second question.

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

All right, I think that's a good point Paul and I also think it's helpful to remember that what we're trying to do, at least at this initial phase, is create the circumstances that enable providers to respond to a query legally but that don't necessarily require them to respond to a query.

So, we're trying to create an inviting playing field but at the end of the day the rules around whether you disclose or not today are permissive. Once we settle for that if we want to start getting into conversations like the one David suggested that under certain circumstances professionally providers should not, not disclose, right?

That's another set of circumstances, instead what we're trying to do is say, what's the environment under which it's reasonable for providers to respond to a query given their obligations to disclose data only in certain circumstances and to certain people. How do we create an environment where those uncertainties don't create unnecessary obstacles?

Paul Egerman – Businessman/Software Entrepreneur

Right, so if we go to ...

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

Let's at least just get clear on what question number one says, justify reliance on what?

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

That the person at the end of the query is someone that you can share information with and for the purposes of identity it is because you can reasonably assume that they are who they say they are. Then you get to question two, which is what's reasonable assurance that if you're being asked to release information for direct treatment ...

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

Okay, so what constitutes?

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

Yes.

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

I guess identity credentials is what throws me off.

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

Well, okay maybe that's the wrong term.

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

What constitutes sufficient information to rely on the electronic transaction as being from who it says it is, is that?

Paul Egerman – Businessman/Software Entrepreneur

That's a better way of saying it, Wes.

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

Yeah.

David McCallie, Jr., MD – Cerner Corporation

I think Deven wrote – Deven, you rolled up two notions into identity that, you know, I don't think we want to go deep on the technical details, but who they say they are is one thing to be proven by an NSTIC credential, you know, absolutely certainty, but you also rolled up into that identity that there's someone that you ought to respond to that's a different level, that's more than identity, that's membership in an organization that is a healthcare organization etcetera.

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

You know, what I didn't mean to, David, all I meant with these dashes was to suggest some mechanisms which you could rely on that the person is who they say they are on the other end.

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

Well, I'm going to propose that one part of the mechanism that is adequate, if not always used, is a direct relationship between the querying entity and the other, other than NORC, but a relationship where we know them, we do business with them, you know, we regularly refer patients. If we're sure that this is the hospital out in the next county, we're sure technically that that's the right thing, we're sure we can accept the request from them.

Paul Egerman – Businessman/Software Entrepreneur

Yes and so this is Paul. I think that's a great proposal, Wes, it's consistent with what you said before. I think you used the word private but it's really sort of like a ...

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

A prior, well, no I don't know what I used, but ...

Paul Egerman – Businessman/Software Entrepreneur

Yeah, basically it's, you know, it's basically two provider entities.

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

That know each other.

Paul Egerman – Businessman/Software Entrepreneur

That have a...that have established a relationship and established a mechanism to communicate.

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

Right.

Paul Egerman – Businessman/Software Entrepreneur

Yeah, so, I don't know if private is the right word, but it's sort of like an existing relationship that's established, which happens a lot.

David McCallie, Jr., MD – Cerner Corporation

But I'm...this is David, just to be picky, that goes beyond identity.

Paul Egerman – Businessman/Software Entrepreneur

I know but it at least answers the identity ...

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

Yeah, that's the problem with this question.

Paul Egerman – Businessman/Software Entrepreneur

It answers the identity process, because there really is sort of like three different ways, one is like the use of the direct certificate, which is sort of like using some sort of standards level certificate approach, the second is, you know, if there is membership in some trusted network and that network has its own vehicle for doing it and the third is it's just, you know, a separately determined identity process between trading partners.

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

Deven, could you flash up slide number two for a second?

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

Sure.

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

Or question two.

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

Oh, yeah, I mean, I actually, so you're going, Wes, exactly where my head was going, which is that there's a bunch of stuff probably listed here that could go on the other one too.

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

Well, I don't know, I guess the question is, let's go back to number one now, all right? I see three questions. One ...

David McCallie, Jr., MD – Cerner Corporation

I hear chickens.

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

Yeah and they agree with me. The three questions are do I know that these bits coming in on the wire are really from who they claim they're from?

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

Right.

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

Question number two is if I get bits on the wire that request information from somebody else do I trust them enough to believe them when they say they have a patient relationship?

And number three then is what is now question number two, which is what is this thing they have to claim in order for me to have legal cover in order to release information to them and I think we're having sort of different people are combining these three questions into two different ways.

David McCallie, Jr., MD – Cerner Corporation

Correct, I agree.

Gayle B. Harrell, MA – Florida State Legislator

This is Gayle, I also want to chime in when you're finished, Wes.

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

Well, I think this would be a good time.

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

Go ahead, Gayle?

Gayle B. Harrell, MA – Florida State Legislator

You know, if we're going to get into this how do you identify a trusted network and is that a pre-known network and do we have a way of measuring what standards or what they use to validate their people and, you know, that comes into governance issues, so when you use the word trusted network, membership in a trusted network that opens up a whole new can of worms.

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

Well, except that essentially what I'm doing here, Gayle is not – well, on the one hand now that I think about sort of the three ways that Wes laid it out. I wasn't trying by using the term trusted network to suggest that there be sort of some separate accreditation or governance model that vets a particular network that you join.

I mean, that wasn't what I was initially suggesting, but instead that, you know, certainly if you have signed up with a network, signed participation agreements, signed up for a particular infrastructure where there is a set of commitments regarding data sharing that you have agreed to and that others have collectively agreed to that that is one mechanism through which you can have some assurance, not 100% assurance, but some assurance that the bits on the other end of the query, you know, belong to the provider that she says it is and that maybe secondarily this is someone that you trust with sending information or maybe you don't because you don't really know the person you just, you know, are reasonably sure that they are who they say they are, but you've never heard of them before so ultimately you don't release the data.

But, it wasn't an issue of, you know, well we have an infrastructure for vetting RHIOs and these are the ones who you sign up for. I mean, that was arguably what was sort of within the – you know, what was the focus on the NwHIN governance rule and we're not going in that direction.

Paul Egerman – Businessman/Software Entrepreneur

So, that's a good explanation, Deven. So, to get back to the three questions that Wes and David are proposing they basically are saying to take the first two questions and really sort of – it's really the first question and expand it so that the first part of the first question becomes, you know, what constitutes sufficient identity credentials and the second one becomes, you know, how do you know if the – you know, once you define the person, the entity on the other side how do you know this is somebody you want to talk to.

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

Well, I think that Micky's suggestion about separating authentication from authorization probably works pretty well.

Paul Egerman – Businessman/Software Entrepreneur

Okay, so on the authentication piece it seems to me if we're limiting ourselves to this concept of, you know, we're now authenticating the entity or the requester, what constitutes sufficient credentials? I mean, one would be a direct certificate another would be, as you described it some mutually acceptable ...

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

Well, VPN, I mean ...

Paul Egerman – Businessman/Software Entrepreneur

Yeah, some mutually acceptable process like a VPN.

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

It turns out, yeah, there is usually a certificate involved again, but I would suggest that what constitutes sufficient authentication is whatever constitutes sufficient authentication under HIPAA as usually applied.

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

Yeah, well and that's a good statement and of course ultimately is the law, but the problem is that HIPAA doesn't have a lot of detail here and so what I thought we were trying to do was to create, you know, a set of suggestions ...

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

I think that's a security issue, I don't think it's a policy issue.

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

Well, it's a security rule issue, you know, you do have to send data to the right place.

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

Yes.

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

That's the rule.

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

Right.

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

But how can we help – is there a way to sort of help providers along with this.

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

I don't, I think ...

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

... trying to suggest, look we already know that they're legally required to send it to the right place.

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

And they're legally required – they're legally required to authenticate who they're sending it to and they're legally required to authenticate who they're getting it from.

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

Yeah.

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

That's part of HIPAA. All right, there are many ways of doing that and if we just look at the difference between directed and direct, okay, we see examples that are certificate-based that are VPN-based with various forms of determining authentication for the VPN, you know, and all of them have to stand up to a HIPAA audit at some time or another the security office of the organization has to believe that when, you know, the auditors come in they're going to agree and they have to agree that there won't be a breach because of their lack of attention to this issue. I don't know what else we would want to say about that.

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

Right, maybe there isn't anything.

Paul Egerman – Businessman/Software Entrepreneur

Okay, well, let's try to take those comments and make that our answer on the authentication question.

David McCallie, Jr., MD – Cerner Corporation

Well it...this is David, are we discussing question one or question two or are we...

Paul Egerman – Businessman/Software Entrepreneur

We're discussing question one; I'll call it question 1A.

David McCallie, Jr., MD – Cerner Corporation

One A.

Paul Egerman – Businessman/Software Entrepreneur

What constitutes identity credentials.

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

For authentication.

Paul Egerman – Businessman/Software Entrepreneur

For authentication.

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

For authentication purposes.

Paul Egerman – Businessman/Software Entrepreneur

Credentials for authentication.

David McCallie, Jr., MD – Cerner Corporation

I think that naturally fits more tightly with question two although I don't know that it matters as long as we get the thought down, but when you say you're in a treatment relationship.

Paul Egerman – Businessman/Software Entrepreneur

Well, wait, we'll get to treatment relationship, we just want to make sure that the person at the other side is who they say they are.

David McCallie, Jr., MD – Cerner Corporation

But that doesn't have to do with auth – okay, I'm sorry, your saying authentication and so restate what the...

Paul Egerman – Businessman/Software Entrepreneur

... identity credentials.

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

Well, no we changed that, we changed that.

Paul Egerman – Businessman/Software Entrepreneur

That the organization requesting is who they say they are.

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

We took away the word credentials, what constitutes...

Paul Egerman – Businessman/Software Entrepreneur

... identity approach to ...

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

And it's HIPAA authentication. I mean ...

Paul Egerman – Businessman/Software Entrepreneur

Okay and so we have an answer for that.

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

Yeah there is – I mean, it would be nice if we had some specific things to point to like a National Strategy for Trusted Identities in Cyberspace.

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

Well, I would say that we have to decide whether we are trying to build the most complete and therefore the thing that takes the longest to roll out or we are trying to build a safe harbor for action now and that would determine how nice it is to refer to national trusted identities and so forth.

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

So, I mean, I think, ultimately we were hoping to provide a set of policy recommendations that would smooth over some of the gaps and provide suggestions to people that, of things that they can do that are consistent with already, with HIPAA obligations that already say, you know, you need to send it to the right end point, right?

I mean, that sort of is known. I think, what we were hoping to do would be to be able to point to one or more things that ideally should be almost sort of blessed as, well, you know, there's sufficient amount of oversight here or there's sufficient background.

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

I ...

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

But we just are not there yet it sounds like.

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

We're not and I think we have a lot of meat in the other two, now two questions that are left where we can provide guidance.

Paul Egerman – Businessman/Software Entrepreneur

Right.

David McCallie, Jr., MD – Cerner Corporation

Well, I'm not – this is David – I'm not sure I agree with Wes, I like Deven's thought, I mean, we're not listing a mandatory way to vet identity or to vet your identity but we're suggesting that, based on all of the work that we've all done over the last couple of years on direct that that's an acceptable approach for the purposes of identity, it doesn't answer the other questions 2, 3, 4, 5, but it addresses the identity and that other kinds of trusted networks are also appropriate and that doesn't rule out future enhancements, but it says ...

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

So, just to be clear, David, you're talking about authentication?

David McCallie, Jr., MD – Cerner Corporation

I'm talking about identity of the user.

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

Well, but this question we're talking about now is authentication.

David McCallie, Jr., MD – Cerner Corporation

Well, that's what that is.

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

So, identity and authentication are exactly the same?

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

Well, they're not.

David McCallie, Jr., MD – Cerner Corporation

Authentication is proving that you are who you say you are.

Paul Egerman – Businessman/Software Entrepreneur

Right.

David McCallie, Jr., MD – Cerner Corporation

So, you have an identity and you have a system in place to prove that you are who you say you are; to me that's what it means.

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

All right, okay.

David McCallie, Jr., MD – Cerner Corporation

And, I'm saying we've worked hard on the direct as one way to build a national scale identity assertion mechanism that can be trusted for HIPAA compliant healthcare transactions if it meets a long list of criteria which we ...

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

Yeah, I don't ...

Paul Egerman – Businessman/Software Entrepreneur

Let me make a suggestion which is I liked the way Wes and David have taken the first two questions and made it three because it clarifies things and what I'd like to do is suggest that what Deven and I will do is we will write up something for question number one and circulate that to everybody, and then we'll talk about direct certificates as one vehicle and we'll provide some sort of general discussion about other vehicles to constitute sufficient identity.

What I'd like to try to do is see if we can move a little bit to, I'm calling it question 1B, but the second question, which is if you've got the, you know, if you've authenticated who is on the other side how do you decide that they're authorized to get information.

I wonder if we could just spend a minute talking to that because it does overlap with what we call question 2 under treatment, but, you know, one of the ways you could decide that they're all authenticated is if ... for example, if there is membership in some, you know, in some network of activity so that, you know, if you're a healthcare provider and you join some group of other providers that you're going to agree under some circumstances to exchange information if you get a request from another member of that network that would cause you to say, hey, that's authorized, it's not still yet the question of whether or not there's a treatment relationship but that's how you would do...that would be one way of doing authorization.

Another answer I would give to that would be if there is a known treatment relationship with the patient, you're already aware that the patient is for example an inpatient at a certain hospital, you know, then that would be...make it reasonable that there would be some communication going back and forth. So, that would be my first two answers to the authorization, I don't know if people have any other answers to that authorization question.

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

Well, you know, keeping in mind that authorization in the context of this scenario where we're saying it's for direct treatment and it's, you know, and HIPAA controls there aren't any additional rules that apply what other authorization question is on the table?

David McCallie, Jr., MD – Cerner Corporation

This is David, can I – I'm curious to know Deven what you think of whether we would want to restrict the notion of direct treatment as defined by HIPAA and what I mean by that is as say with respect to non-covered entity types of "treating relationships" with the patient?

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

Yeah.

David McCallie, Jr., MD – Cerner Corporation

Do we want to constrain this to covered entities is where I'm headed?

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

Yes.

David McCallie, Jr., MD – Cerner Corporation

And I think we do. I think you'd want to say that somewhere.

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

Well, for this scenario I believe we do.

David McCallie, Jr., MD – Cerner Corporation

Okay, yeah, in other words, you know, a network where someone shows up and says, I'm the sales person at the local nutraceutical store and I'm treating this patient I want their records that might not qualify under our definitions here, correct?

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

Well, it's not the scenario that we're trying to address, again ...

David McCallie, Jr., MD – Cerner Corporation

Okay, so we're limiting the scenario itself to HIPAA covered entities, okay, thanks.

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

So, as we revise these we're going to have headings that keep reiterating we're in scenario one and then that's covered entities, is that ...

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

Yeah, no, we're definitely going to do that, it's probably a little bit more clear in the text document than it is on the slides.

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

Okay.

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

So, we'll make sure that is more clear in the next iteration of this.

David McCallie, Jr., MD – Cerner Corporation

Yeah, I see it now, thanks, I just – I needed to see it reiterated that was all.

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

Well, that's okay, it's all right, I mean, there's sort of so many permutations of this it's always helpful to stay on track. So, you know, so again, on sufficient assurance of the treatment relationship, also known as in this scenario, authorization – you know, essentially I tried to list ...

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

No.

Paul Egerman – Businessman/Software Entrepreneur

Let's not worry about the word authorization. We do need to know what constitutes sufficient assurance of a treatment relationship.

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

Yes.

Paul Egerman – Businessman/Software Entrepreneur

Okay, so skip that one word and let's just look at this question. I'm sorry, go ahead, Deven.

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

Yeah, thank you, Paul. So this is – none of – these are not mutually exclusive they are options proposed for discussion for ways that, you know, that you could rely on a ...

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

Yeah, so I feel bad asking Deven a lawyer question, but does the structure of this say that any one of the bullets is sufficient?

Paul Egerman – Businessman/Software Entrepreneur

Yes.

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

Or some combination of them is sufficient or what?

Paul Egerman – Businessman/Software Entrepreneur

Any one of them.

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

I think any one of them.

Paul Egerman – Businessman/Software Entrepreneur

Although there could be more than one, right?

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

Yeah, there's no problem with being doubly sure, but all right. So, each of these should on its own, each of these bullets comprise sufficient assurance of a treatment relationship to – and I justify reliance is a little tough, but to provide a reasonable assurance for sending information.

David McCallie, Jr., MD – Cerner Corporation

Well, you're asking the question, Deven, right? You're not saying you're proposing these as answers?

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

Well, they're straw answers.

David McCallie, Jr., MD – Cerner Corporation

Okay.

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

Yes, if any one of them ...

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

All right, okay.

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

Feels weak to you guys we should take it out.

Paul Egerman – Businessman/Software Entrepreneur

Or if there is something you want to add.

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

Or if there is something you want to add, good point, Paul.

David McCallie, Jr., MD – Cerner Corporation

Yeah, number four bothers me a little bit the mere attestation, I mean, as is clued by the use of the word mere attestation ... absent network accountably. I mean, that makes me a little nervous, I'd like to think about it some more.

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

Okay.

David McCallie, Jr., MD – Cerner Corporation

As opposed to number three, which I think works really well.

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

Right, I'll have to put numbers on these too; it might be easier to follow.

Paul Egerman – Businessman/Software Entrepreneur

Yeah, but you have to, this is Paul, I think you also have to think about it in the context of the question 1B that we asked, which was, you know, who is really authorized to ask. So you get a request, say from an ophthalmologist who wants to see like a medications list well why would you say no? I mean, you can't think of why the ophthalmologist would like to look at that other than to treat the patient.

Leslie Francis – University of Utah College of Law

Well, this is Leslie, that's where it gets really complicated on the sensitive information question.

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

We're not there yet, Leslie.

Paul Egerman – Businessman/Software Entrepreneur

We're not there yet.

Leslie Francis – University of Utah College of Law

Well, I know we're not, but ...

Paul Egerman – Businessman/Software Entrepreneur

But, I'm saying, I'll give you an example, you've got an ophthalmologist you've already identity proofed them that they really are the ophthalmologist.

Leslie Francis – University of Utah College of Law

Right.

Paul Egerman – Businessman/Software Entrepreneur

This is an ophthalmologist that exists in some healthcare network that you may have worked with before and now they simply say, I've got your patient in front of me I need to know their medications profile because I want to make sure that there's not something I, you know, there ...

David McCallie, Jr., MD – Cerner Corporation

Paul?

Paul Egerman – Businessman/Software Entrepreneur

... medications that could be impacting whatever the ophthalmologist is looking at, why wouldn't you just give him the answer?

Leslie Francis – University of Utah College of Law

So, the reason I raised the sensitive point was only because in so far as scenario two is directed to information about which there are special legal obligations there are privacy people who have taken the stronger view that it should be essentially care related, that's not my position, but ...

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

I mean, so, here's another thing to keep in mind we are not putting up a set of rules that will require ...

Leslie Francis – University of Utah College of Law

Right.

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

The data holder to respond, at least not at this phase of our discussion.

Leslie Francis – University of Utah College of Law

Right.

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

We are instead creating a set of conditions under which you could respond.

Leslie Francis – University of Utah College of Law

That makes much more sense.

Micky Tripathi – Massachusetts eHealth Collaborative

So, if we just go back, this is Micky, Paul, the way you phrased the interpretation of four I heard you bleed into six, which is to say that you had suggested that there was some other knowledge I had of the ophthalmologist.

Paul Egerman – Businessman/Software Entrepreneur

Well, yeah, I mean, what six is, is the last one says ...

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

Yeah.

Paul Egerman – Businessman/Software Entrepreneur

You know this ophthalmologist is treating that patient ...

Micky Tripathi – Massachusetts eHealth Collaborative

Right.

Paul Egerman – Businessman/Software Entrepreneur

And so, you know, I don't know, maybe you've got a note in the record or something that says, you know, you know that they've prescribed some drugs already and so, you know, then it just seems like it's pretty comfortable.

Micky Tripathi – Massachusetts eHealth Collaborative

Yes.

Paul Egerman – Businessman/Software Entrepreneur

Number four is more of an issue of maybe you don't know it but you know who the ophthalmologist is somehow because of some criteria, you have some reason to trust the ophthalmologist and so you shrug your shoulders and you give them what they're looking for, especially since there's nothing, you know, the patient is not on ...

Micky Tripathi – Massachusetts eHealth Collaborative

Right.

Paul Egerman – Businessman/Software Entrepreneur

Any controlled substances or anything so it's ...

Micky Tripathi – Massachusetts eHealth Collaborative

Well, I guess, I would have counted that as in number one. I guess what I'm getting at is that number four, if it's really about I don't know anything about this ophthalmologist except that they're an ophthalmologist, is that what you were getting at with this one? Because, if we agree that that's okay then we don't need any of the other ones.

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

Yeah, number four says – I have this concern about the term – but the way I read number four is if all I know is that this is really an ophthalmologist that there's no reasonable chance that this not the person who says it is and I know they're an ophthalmologist and they aver that they have a treatment relationship with the patient then I'm covered to respond.

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

Right.

Gayle B. Harrell, MA – Florida State Legislator

I believe legally you are covered to respond.

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

Well, I think it depends Gayle on whether it's reasonable for you to rely on that attestation as part of the disclosure. I mean, you know, if push came to shove – you know, if you were questioned about it by regulators you might say, well I relied on their attestation and then it would come down to whether it was reasonable for you to do so.

Micky Tripathi – Massachusetts eHealth Collaborative

Right.

David McCallie, Jr., MD – Cerner Corporation

Right.

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

Well, that's what we're trying to hear give cover or not for right?

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

Yeah, exactly.

Micky Tripathi – Massachusetts eHealth Collaborative

But if we agree with four then all the other – I mean, that dominates all the others, right?

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

Well, it does.

David McCallie, Jr., MD – Cerner Corporation

That's correct.

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

But, it's also sounding like people have some discomfort with that being...

Paul Egerman – Businessman/Software Entrepreneur

Yes.

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

Sort of the only thing that you would have to rely on if you – you know, I think you're right that if we found that acceptable you wouldn't need any of the others.

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

Yeah, so to be clear we're talking about a reason for releasing information, a justification for releasing information that could be applied for automated release. So, you know, the fact that, you know, this is a specialty that they have in some states that we don't agree with in policy or something like that none of that can come into factor.

It seems to me that depending on, you know, I guess we can take out absent network accountability because I don't know what it is and it's absent anyways, but ...

David McCallie, Jr., MD – Cerner Corporation

No.

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

I think certainly there's a lot of reluctance to agree that simply a provider saying that they have a patient relationship is sufficient or not, I mean – hello?

Paul Egerman – Businessman/Software Entrepreneur

Yes – well, that's what I'm hearing, Wes, is there not ,, I gave the example of the ophthalmologist but maybe it's some specialty people have less ...

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

I don't know, I mean, what ...

Paul Egerman – Businessman/Software Entrepreneur

Or there's some reason why, you know, you'd kind of like to know a little bit more about who is on the other side.

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

Well, I guess I'm obviously – we would like these policies to handle both an automated reply and a non-automated reply, but if it's going to handle an automated reply that's where ...

Paul Egerman – Businessman/Software Entrepreneur

Then you feel you need ...

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

There's no judgment that comes to mind. I just don't know, what would happen in a city hospital if a request was faxed in on a letterhead from an ophthalmologist requesting information about this patient and they were able to look up in the phone book and find out that this is really an ophthalmologist or they were able to, you know – would they reply, I think they probably would, wouldn't they?

Paul Egerman – Businessman/Software Entrepreneur

Yes, I think they would, they probably would if a human is involved, I'm taking a guess, they would reply in the context of it being a reasonable request.

Micky Tripathi – Massachusetts eHealth Collaborative

I think it varies. I was with a hospital in Western Massachusetts last week and I asked them this very question and they said, we would ask them for some type of consent with the patient's signature.

David McCallie, Jr., MD – Cerner Corporation

Yeah and I think – this is David, I think that's why the choice there about some expression or indication of patient consent is what in the real world will help decide this case that we're hung up on here.

Paul Egerman – Businessman/Software Entrepreneur

So, it sounds to me that the mere attestation, whoever said it correct when they said the word mere sort of with a little bit of fluke.

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

What's ... in there.

Paul Egerman – Businessman/Software Entrepreneur

Yeah, but that doesn't quite belong in our final letter as this is what we've all agreed to. There is a lot of – people are very uncomfortable with this as it is now, but the other points people are okay with is that what I'm hearing?

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

Well, you heard the first point for sure. What do you mean network rules provide accountability for false attestations? That means I have an operating agreement with some network as identified under slide one and that says that this particular provider has signed up to some common set of rules with me about how to handle people who create false attestations.

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

Yeah, I mean, I think, it sort of – there's a backstop is essentially – you know, I certainly heard or read some participation agreements where there's an infrastructure in place where you can be ...

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

Yeah, so ...

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

For falsely attesting.

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

So, being a member of an HIE or being a member of a vendor provided, I mean an EHR vendor provided HIE where participation requires signing such an agreement and living up to it would be sufficient unto itself to release the data that makes sense.

David McCallie, Jr., MD – Cerner Corporation

Yeah, that's how Surescripts works for example as we've mentioned before.

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

Yeah, right, yeah.

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

Yeah.

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

So, some indication of patient consent ...

David McCallie, Jr., MD – Cerner Corporation

Which we'd have ...

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

Some indication could be anything from just writing on file where a signature goes to including a copy of the form it's a little general to respond to I think.

David McCallie, Jr., MD – Cerner Corporation

Well isn't that – that becomes a separate question is what is sufficient indication of consent.

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

So, we could say that sufficient assurance is sufficient indication.

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

Well, again, we're not talking about satisfying a legal requirement here with this consent term.

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

Yeah.

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

It's just, you know, you have – the record holder gets some sort of assent from the patient and I added that doesn't conflict with what the record holder knows either from experience or has on record to be the wishes.

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

Yes, just help me understand the difference between four and five.

Paul Eggerman – Businessman/Software Entrepreneur

Here's what I propose, Wes ...

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

Yeah?

Paul Eggerman – Businessman/Software Entrepreneur

Four is the ophthalmologist request a medication profile.

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

Right, yeah.

Paul Eggerman – Businessman/Software Entrepreneur

Five is before the ophthalmologist does the request the ophthalmologist sends over a fax or an electronic signature from the patient saying, please tell Dr. Ophthalmologist anything he or she needs to know, is I'm seeing ...

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

Yeah, the mere attestation is the provider just making a statement.

Paul Eggerman – Businessman/Software Entrepreneur

It's the provider making a statement.

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

Making a statement and attesting that they have consent or attesting that they have a ...

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

Attesting to the treatment relationship.

Paul Eggerman – Businessman/Software Entrepreneur

It is I'm seeing a patient and I want the data.

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

All right, so number four ...

Paul Eggerman – Businessman/Software Entrepreneur

Five is the patient says, yes, I am seeing this doctor and I want you to give him the data ...

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

All right, I guess the question is what – you've got 4.5 then. The ophthalmologist says, yes, I'm treating this patient and yes I have on file a consent, a current consent, from the patient for me to get their data, but it's not actually transmitted.

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

Well, I think what I meant by number two and this can be reworded to be more ... by number – shoot, I definitely should have numbered these, 1, 2, 3, 4, 5 ...

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

Yeah.

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

Is that the record holder sees or hears patient consent not attestation patient consent.

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

Okay, so some express ...

David McCallie, Jr., MD – Cerner Corporation

Oh, oh.

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

Transmission or some display of patient consent and all the rest and all does not conflict with this, so – so, it's either transmitted ... it would probably have ... could have separate bullets for what is sent to me and what do I have on file anyway rather than trying to lump them together. And, I would say that – some manifestation of patient consent, I mean, what's the right word?

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

I don't know we can work on that, Wes.

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

Yeah.

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

Let's try not to wordsmith during the call if we can. We can definitely – but the idea was to create a distinction, you know, that attestation from the provider is one set of ... one thing that you might get, I'm sorry for the echo I hope it's just on my end.

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

No somebody is on hold.

MacKenzie Robertson – Office of the National Coordinator

No, we hear it on this end too. If you guys at Altarum could just pull the line and let them know that they're putting us on hold, thanks.

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

And then, you know, so the indication of patient consent was intended to be something separate and we'll try to reword it so it's clear that it's about something that the data holder can rely on, again, not because there's a consent legal requirement, but in terms of sort of justifying the treatment, knowing that there is a treatment relationship and therefore you can, under HIPAA, disclose.

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

I'm sorry; I guess the best thing is to wait for the rewrites.

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

Okay. Can we actually start; I'm almost reluctant to do this at 3:20.

Paul Egerman – Businessman/Software Entrepreneur

Yeah, I think it's fine, Deven.

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

The issue of automation versus human mediated and whether it makes a difference and in the automation category you could almost subdivide that into two types, automation set by the data holder, right, like I'm going to automate it for this set of providers because I deal with them all the time or automatic by participation, you know, to anyone who queries like in some network arrangements that we may be aware of.

Paul Egerman – Businessman/Software Entrepreneur

And Deven, this is Paul?

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

Yeah?

Paul Egerman – Businessman/Software Entrepreneur

On this question I think Wes actually already gave an answer to this.

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

He did.

Paul Egerman – Businessman/Software Entrepreneur

Which makes sense, which is to say if you're going to do this automatically, you know, electronically and automatically I think it does matter, in other words you need to have more information on this whole – these issues that we've been talking about authentication and treatment relationship.

Micky Tripathi – Massachusetts eHealth Collaborative

Right, so you could ...

Paul Egerman – Businessman/Software Entrepreneur

That's what I heard.

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

Well, I didn't mean to say that.

Paul Egerman – Businessman/Software Entrepreneur

That's what I heard from Wes.

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

I meant to say – at one point I meant to say we want a policy that is adequate to support automated response with the data and then I didn't mean to say that I had pre-concluded that, if it's possible to pre-conclude that question number two, the answers to question number two were different for those two cases.

Micky Tripathi – Massachusetts eHealth Collaborative

This is Micky; it seems to me that the question of automation is linked to this level of assurance issue. I mean, that's what organizations do today if you look at...you know, what Beth Israel does today they have automated capability with SSA and the MEGAHIT Project because there is a set of rules established with them and that's automated, but for lots of other organizations who come in they require a person in the loop.

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

Of course, we're not preventing anybody from having that distinction. The question is are we enabling anybody not to have that distinction. So, it maybe that we want to go back and look at the answers to question two under 2A and 2B one for an automated response and one for an intermediate response.

Paul Egerman – Businessman/Software Entrepreneur

Yes, but, and this is Paul, it seems like whole discussion does indicate, to me at least, that it does matter, because if you're going to do an automated response then minimally you'd have some very clear policies, you'd have to make a lot of these decisions whereas ...

David McCallie, Jr., MD – Cerner Corporation

Well, and ...

Paul Egerman – Businessman/Software Entrepreneur

If it's manual, if you use the example of you just fax in a request to, you know, the HIM Department, you know, there's somebody on the other side who can think about it, can call back, ask some questions, you know, it's a little bit more – there's an opportunity to be more subjective.

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

But, I ...

David McCallie, Jr., MD – Cerner Corporation

So, we are agreeing that it does make a difference is that right?

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

I think we're agreeing that it makes a difference but I find the concept of, you know, the capability being able to be turned on by the data holder, which, you know, it could be assuming that that capability exists, right, because that would still – they'd still be in the judgment decision of deciding, you know, to automate or not to automate or ideally even when to automate and not to automate, that would be linked to their, to levels of assurance that they ultimately have to decide in terms of their comfort level.

Paul Egerman – Businessman/Software Entrepreneur

That's right. I mean, another way to think about this is healthcare organizations deal with this right now all the time.

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

Yeah.

Paul Egerman – Businessman/Software Entrepreneur

They get tons of requests and they respond and they respond actually pretty well, anywhere from pretty well to extremely well. They do their best for their patients, but when you say it's going to happen electronically automatically I think everyone's going to inhale a little bit.

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

Right, but that's why we're here, right?

Paul Egerman – Businessman/Software Entrepreneur

Well it does matter.

Gayle B. Harrell, MA – Florida State Legislator

Well, I think it definitely does matter, we've, you know, answered that when we were talking about number two.

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

Yeah.

Gayle B. Harrell, MA – Florida State Legislator

So, it really does matter.

Paul Egerman – Businessman/Software Entrepreneur

It does matter.

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

So, the question is, is there any – are we willing to take a position that there are some criteria under number two that would be, that would justify an automated response? If so, which? That's two questions.

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

Yeah.

Paul Egerman – Businessman/Software Entrepreneur

Sure.

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

Okay.

Paul Egerman – Businessman/Software Entrepreneur

This is Paul, I think one of the things we want to do is we want to have as much automated response as we prudently can.

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

Yes and we know of at least two circumstances that have been described where automated responses happen, I think we know of more if we just sat down and looked at it, but certainly Beth Israel's – I think it was only a trial with SSA, right?

Micky Tripathi – Massachusetts eHealth Collaborative

No, I think its production.

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

Oh, is it?

Micky Tripathi – Massachusetts eHealth Collaborative

Oh, yeah.

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

Okay, and various, if not all users of the EPIC capability do have an automated, do have some conditions under which they do automated reply. So, we ought to be able to find an answer to number two that is sufficient assurance of a treatment relationship to provide cover for automatically responding.

Paul Egerman – Businessman/Software Entrepreneur

That make sense.

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

That makes sense.

Paul Egerman – Businessman/Software Entrepreneur

So, Deven, I think we're supposed to wrap up at 3:30 is that right?

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

Oh, yes.

Paul Egerman – Businessman/Software Entrepreneur

And so, it is now the right point to say this has been terrific progress.

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

We can do better in this more focused environment, we still have some discussion to have but I agree.

Paul Egerman – Businessman/Software Entrepreneur

We have three more questions to go through but we've completed three or four, because we've expanded and added a question and answered it and we got a lot of write up to do, but I think we've made good progress.

So, I think what's going to happen next is Deven and I will talk about this, we'll do some write up on it but then we're going to try at our next meeting to start with question number four. So, we want to continue this discussion. So, we are probably going to start with the issues of question four and so people before the next meeting might want to read 4, 5 and 6 to think about them a little bit in advance. Does that sound right, Deven?

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

I think that's right. We may take a little bit of time to make sure we have words, have done the right wordsmithing you and me in the interim and maybe ...

Paul Egerman – Businessman/Software Entrepreneur

That's correct.

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

Do that by e-mail.

Paul Egerman – Businessman/Software Entrepreneur

That's correct, but what I'd like to try to do is get through all the questions and then we'll go back through and make sure we get all the wordsmithing and everything right.

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

Yes.

Paul Egerman – Businessman/Software Entrepreneur

But, this is a very important and very good discussion, but I also think we should open the lines to see if there any public comment.

Public Comment

MacKenzie Robertson – Office of the National Coordinator

Okay, operator can you please open the lines for public comment?

Caitlin Collins – Altarum Institute

If you are on the phone and would like to make a public comment please press *1 at this time. If you are listening via your computer speakers you may dial 1-877-705-2976 and press *1 to be placed in the comment queue. We do have a public comment.

Operator

It comes from the line of Michael Shipman; you may proceed with your comment.

Michael Shipman

Thank you, as I listened to the debate on the authentication of the requester just wanted to note that with, you know, upwards of 50% turnover in a physician office and the fact that most of the time it would not be the actual physician doing the requesting, rather it would be an office staff member that some type of protection or authentication at the point of requesting might be appropriate in order for the receiving physician, the physician possessing the data, the provider, to be able to rely on the attestation of the requester. So, yeah, something like, you know, identity authentication. The comment about the use of a certificate would only go down to the actual device sitting in the physician or provider's office rather than the individual doing the specific requesting. Thank you.

Paul Egerman – Businessman/Software Entrepreneur

Excellent, thank you.

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

Very helpful. All right. I think we're done. Thanks everyone.

Paul Egerman – Businessman/Software Entrepreneur

Thank you, our next meeting is March 12th is that right?

MacKenzie Robertson – Office of the National Coordinator

March 12th at 10:00 a.m.

Paul Egerman – Businessman/Software Entrepreneur

Great, thank you very much.

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

Thanks.

MacKenzie Robertson – Office of the National Coordinator

Thanks everybody.