

**HIT Policy Committee
Privacy & Security Tiger Team
Transcript
February 19, 2014**

Presentation

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

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

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

Here.

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

Hi Deven. Micky Tripathi?

Micky Tripathi, PhD – President & Chief Executive Officer – Massachusetts eHealth Collaborative

Here.

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

Hi Micky. David Kotz? David McCallie?

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

Here.

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

Dixie Baker? Gayle Harrell? John Houston?

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

Here.

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

Hi John.

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

Hello.

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

Judy Faulkner?

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

Here.

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

Hi Judy. Kitt Winter.

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

Here.

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

Larry Garber? Leslie Francis?

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Here.

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

Hi Leslie. Wes Rishel?

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

Here.

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

Hi Wes. Are there any OCR staff members on the line? Are there any ONC staff members on the line?

Kathryn Marchesini, JD – Policy Analyst – Office of the National Coordinator for Health Information Technology

Kathryn Marchesini.

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

Hi Kathryn.

Kathryn Marchesini, JD – Policy Analyst – Office of the National Coordinator for Health Information Technology

Hi.

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

Hi Gayle Harrell.

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

Hi Gayle.

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

Did you get David –

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

Dave McCallie?

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

Did you get David McCallie? Yeah, I didn't hear you acknowledge I just want to make sure I wasn't muted.

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

Yes, we got you, thank you David.

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

Thank you.

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

And with that I'll pass it back to you Deven.

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

Okay, terrific, thanks very much Michelle. You are always so cheerful in your roll call we really appreciate that, very nice.

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

And so are you Deven.

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

Well, thank you John. Today with this weather finely there are lots of reasons to be cheerful.

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

Yes.

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

So, this is – the Tiger Team is going to be meeting on this issue of family, friends and personal representative access again and as you'll see from the slides the effort here is to start bringing us to closure on some of these issues based on conversations that we've had on previous meetings.

I don't know whether we will be able to do that today, we're no longer under pressure to wrap this up in time to present it at the March Policy Committee meeting because that agenda is full with discussions on Meaningful Use objectives for Stage 3 taking up the lion's share of that time and we're not able to reserve any time on that agenda and this issue is not a time sensitive one as the Meaningful Use recommendations are.

So, whatever we decide on this issue we will not be presenting it until April. Nevertheless, there are other issues that we could get started on as soon as we wrap this one up so there isn't necessarily a need to draw the discussion out for longer than we need to have it. I just wanted to let you know that if we have some issues that we're not quite resolved on, on this call, we do have a cushion and some additional time to do that.

So, again, keeping in mind that we're focusing on adults for this conversation. We recognize that there are lots of issues with respect to minors access and access by family members to minor's records, we're going to take on all of those issues at a later time when we deal with minors access issues generally and not just necessarily through view, download and transmit.

We did get a lot of great comments on the Health IT Buzz Blog from members of the public about this issue and we are going to hold those in reserve and go back to them when we are able to take up the minors issue again and probably will invite some additional comment at that time depending on whether we're able to have a hearing on that issue and when we start planning for how we do that issue.

But I wanted to let members of the public know who gave us some really good thoughts and ideas and raised some issues for us on the minors issue that your comments are not in vain we just are not taking them up in this round, we're going to be dealing with those at a later time.

And we're also continuing to focus on this issue on access to protected health information through the Stage 2 view, download and transmit capability.

So, what I've done on these slides, which I think a bunch of you probably recognize if you had a chance to look at them, is to begin sort of almost preparing the slides for the Policy Committee as we would present them.

So, there is some background, there is some framing and some potential best practice recommendations that were an attempt to capture our discussions from our previous calls, but you haven't really seen them necessarily articulated in the way that Micky and I, and the staff at MITRE and ONC have tried to capture them. And so we want to make sure that we've – we're correctly capturing our discussions in this space and making sure that we're resolving any additional issues that we need to resolve.

The one issue that we will need to talk about that we have not discussed in greater detail on other calls is the issue of granularity of access within VDT and granularity of function within view, download and transmit. And so we do want to make sure we have sufficient time on the call to have a full discussion of those issues because we really have not been able to spend very much time on them.

Does anybody have any questions? Micky do you have anything to add before I dive into this stuff?

Micky Tripathi, PhD – President & Chief Executive Officer – Massachusetts eHealth Collaborative

No I don't, that was perfect Deven, thanks.

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

Okay. All right. So, does anybody have any questions about what we're trying to accomplish today?

Okay. So, essentially the first few slides lay out some background here and make the case that patients do have an interest in having friends and family be able to access their PHI through view, download and transmit. And by law patients already have the capability to expressly authorize the sharing of their PHI with others.

And we also note that a legal personal representative may have the legal right to directly access a patient's protected health information and in that case under HIPAA they essentially stand in the shoes of the patient with respect to their capability and right to access protected health information.

We also acknowledge here on this second background slide that patients may in fact themselves accomplish that kind of friends and family access on their own by sharing user names and passwords, and although we can't control what patients will do this is not advisable and there is a parenthetical noting one potential downside of patients doing this. I'm sure we could probably list others if we wanted to.

So, therefore a process for granting credentials to authorized friends, family and personal representatives should be sufficiently easy to discourage the shared account option and we also along those lines would need to have the process and the capability to be able to cut off the view, download and transmit access by a friend, family member or personal representative due to a patient change in preference for example or a change in the personal representative legal status this is something that –

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

Hey Deven?

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

Yes?

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

This is John Houston, on the second bullet point –

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

Yes?

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

I know this may be a little bit in addition to what we've talked about in the past, but should we also say that – knowing there should be processes but I think education is important in this as well, you know, not only do we have to have processes to make it easy for people to discourage shared accounts but we need to educate patients as to why that shouldn't be done and I'm wondering if that's something we should add here.

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

I don't know, what do folks think about that?

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

Wes Rishel.

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

Yes, Wes?

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

So, I think a general statement about the importance of education would cover, you know, cover our backsides. However, I would be concerned that a lot of times this access is granted under circumstances of substantial patient duress and I wouldn't want anything like that to become an obstacle to establishing this relationship.

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

So –

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

By duress I mean the patient is in a difficult situation at the time not that they're being forced to give access that was probably a poor choice of words.

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

Okay, okay, you know, one of the things that I was going to tee up for you all when we get to the part of the slides where we talk a bit about what I call "incapacitated patients" but that's probably not the entirety of the population we're talking about people with diminished capacity or impaired capacity or who are vulnerable for one reason or another, you know, have we sufficiently accounted for that, because as you'll see when we get to those slides we, you know, we acknowledged, as a team, that the easiest case is, you know, patient not impaired in any way makes a request for a friend or a family member to have access to the record and that's fairly easy to grant.

But it does get more complicated when you have patients who are, you know, maybe – may not necessarily be so infirm that they have a personal representative but they, you know, for one reason or another are vulnerable or have impaired judgment due to diminished mental capacity, the impact for some of advanced age, we want to be careful about saying this, this isn't true of everybody of course or financial circumstances.

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

And this is John Houston, I don't think that, to Wes's point, that they need – that education needs to necessarily be, you know, done as a prerequisite of granting access but I think there needs to be some program or some way to let the patient know in a, you know, in a manner that doesn't necessarily get in the way of them deciding to give access that they should still be careful about it.

So, you know, again I don't know how but I don't want to get in the way of it either, I just, I think we need to be mindful of that, of training –

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

Well, I – yeah. I think John and I are essentially in agreement but I do need to understand more where we draw the line in terms of degrees of capacity as opposed to incapacitation. I mean, somebody who is got, you know, severe abdominal symptoms and being admitted may still be capable of a lot of interactions but they're not going to, as a matter of course, pay much attention to it.

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

Right.

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

Yeah.

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

Well, and, you know, and then we also – it is going to be up to individual institutions and individual medical practices to, you know, to figure some of this stuff out, right?

So, for example under HIPAA the patient's right to access information, you know, there is an exception in cases where there might be perceived harm to the person for being allowed to access their own information but I think that's an exception that's rarely used, but it is up to the reasoned judgment of the professionals about whether that's a case that exists and –

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

Yeah, I'd go a step further to say not only are they going to but they have the absolute need to do this at least when it comes to the designated representative that it's not something they can reasonably choose to put off in a lot of cases. I guess that's not so true for secondary access, but –

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

Yeah, well, let's –

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

–

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

I'm sorry, go ahead is that Judy?

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

Yeah.

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

Okay.

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

Yeah, I just give a few more – I want to give a few more real life scenarios because I think the duress is – there are different kinds, one is real duress and the other is just slight duress. And the slight duress is “oh, my goodness I'm going on a trip today and my thyroid pills need a – I'll run out of them when I get back, they need to be ordered, please order them now” and you run out of the house, that's an example where if in fact to get someone to be a proxy takes days then – and if you need those pills you don't have much of a choice.

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

Right.

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

And so that's one kind of duress. Another kind of duress is just simply the question “what were your test results today” on whatever it was and assuming you have a good relationship with your spouse you might say “well, I can't show you now because I'm in a hurry but go look them up.”

So, my point is that there are going to be lots of incentives for a patient to share if we don't make it easy for proxy to be done quickly.

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

Right.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

So, actually, Judy, this is Leslie Francis, when I think of real duress I think of vulnerable elders whose family members are really pressing them to let them take over their care and the elders wish to stay independent.

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

But I think we have to consider all those.

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

Yeah.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Exactly, yes.

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

We do but I also think we should be mindful of the role that we play as a Policy Committee and what or as a Tiger Team to the Policy Committee I should say and what is possible for us to say on this as a policy matter versus the individual level decisions that are going to have to take into account the myriad of circumstances that people may be facing that we can't broker at a policy level, right?

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Right.

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

I agree with you but –

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

– if I could, I –

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

Well, we might want to do two kinds of education, one kind of education is the patient on the value of the proxy and the other kind of education is to the healthcare organization on the value of setting it up so the proxy can be done easily and quickly.

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

Right.

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

This is Gayle –

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Well and the other kind of education is –

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

Okay, hold a second I'm going to let Leslie go and then Gayle, because we've got two conversations going on at once. Go ahead Leslie.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Another side of the education is to make people aware that there can be problematic circumstances.

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

And who's educating that? Is that education directed at providers?

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Well the providers –

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

Do they need to know that? I mean, don't they know that already?

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Well, they do but they – given the new power of view, download and transmit it's important for them to not only be aware of the importance of people getting access but the importance of people getting access appropriately.

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

Okay, thank you, I see what you're saying. Gayle?

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

Yes, I think we have to be careful as to who you're going to put that burden on –

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

Yeah.

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

As far as educating the patient. Are we saying that the physician or the hospital, the provider has to provide that very specific education to the patient before you give them their – let them set up their accounts for view, download and transmit?

It becomes problematic as to how you're going to actualize something like this. Currently, patients have the ability to name a surrogate, you know, with your provider and say, you know, "I hereby release any information should my husband call, should my daughter call" you know you can name individuals to receive that information.

Within a health record, electronic health record, you should have the ability to designate that person and then they would have access to set up either an account or be given a password or whatever, but it becomes problematic when you're talking – if you're going to shift the education burden to the provider. This is an important issue and I'm not going to downgrade that.

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

Yeah.

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

That needs to be part of the entire education process that's done at the national level, at the local level as we move into the electronic age of health records is that this is a responsibility the patient has to understand the implications of view, download and transmit and who do you want to make your surrogate, who do you want to make the person who is going to have access to your information and when you set up your account to be able to do that you need to set that up –

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

Yeah.

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

In a way that's easy.

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

So, one of the ways that we've handled some of these education issues when they've come up in the past, those of you who have been on the Tiger Team for a while may remember that this – the issue of educating patients in particular about view, download and transmit and the risks in particular of viewing for example your information on a public computer or downloading to something that's not secure, or to a service that may – where the data may not be protected by health privacy laws and we had recommendations about sort of a bit of a light warning that patients would be given that would be ideal, you know, on the screen for view, download and transmit that patients could then toggle off, but we didn't think it was right for certification because it wasn't one of those things that was one-size-fits-all but just one of – you know, something that was sort of nice to have.

This sounds like another one of those situations where it's almost like a best practice recommendation, right, we don't have a tool nor does it sound like we want to mandate some sort of education but an acknowledgment that, you know, view, download and transmit is different from a onetime passage of a piece of paper and that there needs to be some understanding really on the part of the patients and also on the part of the providers that this is something that's a bit different and that they may – that they have customary processes probably already in place for sharing data with friends and family members and with legal personal representatives but that they need to do some thinking through about what that means for them in this context where the access is going to be continual.

And then Judy's points I think are well taken and we tried to articulate them on the slides that we do need to make this easy or people will do the password sharing which comes with its own set of downsides that patients should ideally be made aware of so that they don't do it, but if we make it easy for people to set up proxies in ordinary situations where there are no issues that makes it less likely that that's an option.

Does that sound like something that we could work – I mean, obviously we have to work through the language around the educational pieces that people desire to sort of be the way that this all gets implemented down the road, but an acknowledgment that we don't really have any policy tools to make people do this.

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

I think – this is Dixie, I joined after you did the roll call I apologize, but I'm reminded of our conversation about the need for education to exchange information via e-mail. You know there are a number of these things that I think most physicians probably handle all at the same time, you know, they now have these forms that say, you know, is it okay to exchange information with you via e-mail, you know, and they point out what the risks are.

It seems like this would be another one of those things that would fall into the same category that as the doctor asks you "is it okay to share to your information with your husband" you would also say "and is it okay to share information with you, exchange information via e-mail" they would also be asking the person at that time, you know "do you want me to allow somebody else to download or view your information."

So, I think a lot of these things point to the need of education and also the need to really ask people multiple questions, you know, together so that they're not so confused. Does that make sense?

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

Well, it does, Dixie, but I'm struggling with what the – that sounds like a recommendation of, you know, these types of conversations can all take place.

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

Yeah, yes, I don't –

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

But if –

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

Think it's overly burdensome to say education because there are a bunch of these things that the doctor needs to discuss and in general I think they do discuss these sorts of things together so I don't think it's overly burdensome.

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

Right.

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

And I don't think it's likely to take place under duress. I think it's kind of part of the routine how do we want to do business here.

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

I don't know, this is Wes, I just wonder if everyone feels that doctors routinely have these discussions with their patients? I see it more as a front desk function.

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

Yeah that's been my experience.

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

This is Gayle –

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

What –

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

It's definitely a front desk function and when you fill out your new patient form or however you're being entered in for the first time or your yearly update you're asked if you want to authorize someone to get your records. If you want, you know, your husband to be able to call in – you know to call in to renew a prescription –

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

Right.

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

Or something like that and there just needs to be the capability within the electronic health record to note that and then they would have the ability to – and then therefore have the ability to view, download and transmit. But the last thing you want to do is make it so burdensome on providers that it doesn't happen.

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

Right.

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

And it shouldn't happen –

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

You know there is a fine line there.

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

I'm sorry.

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

The education part really needs to take place when the person sets up their account in my view and they read, you know, before they start typing in their information and put up their account, you know, the different warnings that we talked about previously as best practice.

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

Yeah.

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

You know at one point, you know, there could be a notation you've authorized so and so to be your – to have access to your account, you know, do you want to do this, do you not want to do this you know.

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

Right.

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

So, you make them choose there.

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

Could I suggest though that often at the time of creating an account is the worst time because people breeze through that along with the on line agreements and everything else.

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

Well then when would you suggest it be done John?

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

Well, sometimes like what we do is we sort of have – we do a patient education in our portal that sort of flips based upon, you know, so you'll get different messages sort of passively on the screen.

I'm just saying that there might be opportunities to do other types of education that is more effective that sort of happens through the normal course of the individual interacting with the portal so that they get that information. They sort of consume it sort of – it's almost like, you know, back in the old days when they'd – you know, on the TV station they'd flash or on the movie screen they'd flash popcorn for a millisecond and people all get up and go to get popcorn.

It's sort of – its passive education sometimes can be more effective. I agree that we should do it up front as well, but I'm just saying there can be other ways to do this that probably meets with a higher degree of understanding and probably is not viewed as negatively by the patient.

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

I think we need – I think we need to and I'll work with Micky on some language on this, because again we are – I do not hear us trying to create a one-size-fits-all educational program here but we need to acknowledge the importance of education and provide some examples of how this could take place.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

That seems exactly right.

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

Yes, I agree.

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

That sounds good.

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

Okay. All right, sounds good and we can – let's get through some of these other slides here. So –

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Deven?

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

Yes Judy? Was that Judy?

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

No it wasn't.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Deven, this is Leslie I have a question about one of them, I'm not sure where you're skipping.

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

I'm only on slide 6.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Yeah, this might be the one. I think that we should say, again not necessarily say how this is to take place but we should be quite direct about the importance of out of band confirmation.

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

Oh, yeah, that's coming up, we haven't gotten to that slide yet.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Oh, okay, because I don't have my laptop on, but –

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

Oh, I'm sorry, you know what I always just assume people have the slides, I'll try to be more careful.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Well maybe –

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

And I'll try to be more –

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

The way the slide currently reads it makes it sound like it's a good idea but not mandatory.

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

Oh.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

And I think we need to make that stronger.

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

I don't know how we make that – let's hold off on that until we get to it. Okay, so again, this is framing this issue for the Policy Committee acknowledging that, you know, issues that need to be resolved before the proxy access can be granted one is the person authorized to access the PHI through view, download and transmit either due to authorization from the patient or due to legal status and then the identification and authentication of the individual or entity granted access and this is – we've been having this discussion all along but this is, noting for the committee that there are these two separate aspects, right?

Is the person authorized to have proxy access and then, you know, the need to credential them appropriately. And then noting that we're going to discuss the issue of granularity of access and granularity of function which we'll hopefully get to today.

So, you know, getting to what we've talked about the easiest case is always when the patient, again adult patient, assuming no other issues involving duress or some sort of incapacity, patient makes a request for view, download and transmit access for a friend or family member, it can be done in person or remotely, providers should ideally document the request in some way and then out of band confirmation can be used to confirm. Let me just get through a couple of these slides so that we can talk about these issues together.

The harder case is when it's actually the friend or the family member who comes to the provider and makes the request and so obviously confirming this with the patient particularly if it's not a case of a legal representative but it's just, you know, I'm, you know, my mother is Georgia McGraw and I'm coming to ask for access to her portal to her doctor, there needs to be some way to confirm that with the patient and here is again where out of band communication comes into play in order to confirm that my mother wants to grant me that access.

And then if you have a circumstance where the patient is incapacitated in some way but again this is not a legal representative issue, this is a friend or a family who is seeking to get access. HIPAA does permit the sharing of treatment related information with friends or family members and we have the background slides on this, but under HIPAA this is really limited to only information that's relevant to the treatment of the patient at that time.

So, if the portal has a lot of historic information on it that isn't as relevant to the current treatment that the patient is getting it's going to potentially be problematic to provide that portal access and the provider needs to consider whether providing access to the treatment information using VDT versus using other means is appropriate.

So, that's again on the issue of does the person have authorization for the record, easiest case the patient makes a designation, harder case is when friends and family come out of band confirmation in order to confirm that and Leslie we'll get to you in a minute because I want you to be able to express your point now while we're actually talking about this.

The other thing I wanted to draw to people's attention was some comments that came in on the Health IT Buzz Blog that might be relevant here and my apologies, I've lost my notes, okay. So, do we want to – one of the ways that I think Judy may have mentioned, and Judy you can correct me if I'm wrong, one of the ways that patients can designate access by a proxy to their record is to be able to do it right in the system on some automatic way and is this something that we want to ask for as a matter of, you know, sort of a requirement for EHRs for example.

I don't know what folks think about that but it does seem to be a fairly easy process and would certainly address the timing issues that Judy talked about where, you know, it's as easy as the patient logging on to her own account and making the designation right on line. And so I just – I wanted to tee those up for folks in addition.

And Leslie why don't you go ahead make your point about requiring out of band confirmation and I'll ask you as you're making that point to consider through what policy authorities we would ask that this be done.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Well, I think it's an important safeguard, it can be – I'm certainly not saying there is a particular way you would do it, there might be different – and it might be through e-mail, it might be through a phone call, it might be through confirmation at the next visit there are a variety of ways that could be done.

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

Yeah.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

But I think it's done with respect to – it's done with respect to – transactions, absolutely seamlessly and this kind of transaction is – at least is important to people given the risks of identity theft and other kinds of problems.

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

Yeah.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

I think view, download and transmit is a way of disclosing information from an electronic medical record so my own analysis would be that it's through HIPAA and the ability to regulate electronic medical records including disclosures from them.

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

Right, but in terms of like some sort of independent confirmation – a perfectly plausible and frankly advisable way of making sure that you're meeting your HIPAA obligations which already exist which is to only disclose information to people who are authorized to get it, right?

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Right.

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

So, if there is a patient authorization you need to confirm that the patient's authorized – you know, what steps you need to take to do that I don't know that HIPAA goes that far, I'm not sure how much more we could say on that other than strongly advising the people use independent means to confirm.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Well, I mean, I think there is the authority to say that for a certain kind of disclosure you need out of band confirmation. But, you know, I think that's something you'd need to figure out internally. I mean, you need to talk to the privacy folks at HHS but I don't see why there wouldn't be HIPAA authority to do that.

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

Well, so let's – I'm going to open this up to the Tiger Team then. What do we want to say about out of band confirmation and how strongly do we want to assert it in terms of as a recommendation, as a best practice or as ideally, you know, something that should be specified as either required under HIPAA or expressly noted and in some sort of HIPAA guidance or sort of all potential options, I would agree with that.

And then I would also like for folks to sort of comment on, you know, automated capabilities to designate by patients and whether that's something that ought to be pursued? Is something to be encouraged voluntarily or something to be pursued on more of a certification basis?

And then while I'm on this topic, because I think it's related to out of band confirmation, there was a suggestion made on the Buzz Blog that people have the ability to get a notification if someone else has accessed their view, download and transmit and that's one way to confirm that in fact it is – that the patient has granted the access it's not the only way.

And I'll make note that people – that we do have – we did have a recommendation for these portals a couple of years ago that there be audit trail capability that patients would be able to obtain some sort of audit trail or accounting, if we want to use that word, of who has accessed their view, download and transmit account but that would be upon request, that's a recommendation we already made a couple of years ago. I do not know if that functionality was part of certification or not. So, I just laid a bunch of issues on the table there and I'm going to stop and let others chime in.

Micky Tripathi, PhD – President & Chief Executive Officer – Massachusetts eHealth Collaborative

So, this is Micky, so just one thing to clarify, on slide 7, which I think is where we started.

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

Yes.

Micky Tripathi, PhD – President & Chief Executive Officer – Massachusetts eHealth Collaborative

And the question of whether this is, you know, sort of – generally falls under HIPAA or what HIPAA might say about this, I just want to clarify and point out, hopefully both, that what we're talking about here is the proposition that we need to have additional authentication for a request that the user, who has already been authenticated otherwise they wouldn't have a patient portal account to begin with –

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

Right.

Micky Tripathi, PhD – President & Chief Executive Officer – Massachusetts eHealth Collaborative

That they're now asking for something above and beyond the basic creation of the patient portal, right?

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

That's a good question. So, Leslie are your sort of strong feelings about this out of band confirmation do they apply to this easiest case scenario which is slide number 7 where the patient already authenticated to the portal is the one making the request?

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

If it's made through the portal then it's either the patient or it's somebody the patient has mistakenly shared. Now with banking if I change my user name and password in my off line – if I'm logged into my account and I make those changes I get an out of band notice that that's occurred.

Micky Tripathi, PhD – President & Chief Executive Officer – Massachusetts eHealth Collaborative

Yes.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

And so, I mean, maybe one thing to do here would be to distinguish notice and confirmation.

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

Right.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

So, requiring an out of band notice is probably utterly simple because you can, you know, you can – presumably when patients establish portals they give an e-mail address and you can e-mail them to let them know.

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

Can I suggest, this is John Houston, I mean, I agree and I think out of band is clearly a best practice that we need to encourage, I hate though to tell somebody they have to do it if all of a sudden there is a better method.

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

Yes.

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

Not that there is a better method, but we can –

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

This is Wes –

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

Go ahead Wes, sorry.

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

No go ahead John I didn't mean to cut you off.

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

Oh, okay, I actually sort of completed my comment. I think we can leave it as a best practice but one that leaves the door open if somebody has a better way.

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

Well, I think there is that issue and there is also the issue of not requiring patients to have e-mail or text messaging as a pre-requirement for exercising this right. You know, I mean, I don't – I mean, I think we know the trend is towards more and more people and in all demographics having at least smart phones but I don't think we can state that as a precondition across all demographics any time soon.

David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College

So, this is David Kotz I'm sorry I joined right after the roll call I think and I think that this could be parsed out into a couple of different sub-cases, this is the "easy case" and we should resolve it quickly. I think out of band notification just makes sense.

In the case where the request is made by someone purporting to be the patient through an on line portal, if the patient makes it in person such as a patient who has no e-mail or smart phone, or access to the portal then you don't need out of band confirmation because they're standing in front of you.

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

Right.

David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College

Now the case where you might use out of band confirmation meaning not just sending them an e-mail but requiring them to click a link or, you know, otherwise confirm that "yes I really did mean to do that" that might be something we would say for the harder cases.

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

Right.

David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College

And I agree with John that we shouldn't –

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

This is Leslie that makes sense to me.

David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College

Thanks, we shouldn't prescribe the mechanism like e-mail or text or something like that I agree with John you want to leave a lot of flexibility there but requiring notification I think is not unreasonable. Sorry, to interrupt.

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

No, that's you didn't interrupt at all.

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

Deven, this is Dixie, I have a question about the mechanisms that are even available to us, you know, we talk about requiring what exactly would that mean?

I mean, certainly I think everything we're talking about here is best practices but how much of the requiring lever do we really have?

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

That is a conversation Leslie Francis and I were just having. I think her thought was that if we felt very strongly about circumstances where confirmation is important like those where for example you're getting, you know, what's on slide 8 for example, where you're getting the request for portal access from the friend or family member and you don't actually know for sure that the patient has – you don't have an in-person request from a patient and you don't have a request through the portal for a patient.

I think what Leslie was suggesting is that the need for confirmation is so important that it's arguably not just a best practice and it ought to be something that people routinely do with, you know, open end about how they do that, but that would be essentially saying, you know, you really ought to do this and then of course it would be up to HHS to decide if they felt as strongly how they could deploy that through the various levers that they have.

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

This is Gayle, I think are there not HIPAA requirements that I can't call up and get somebody's health information without their permission and there needs to be that confirmation from the individual –

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

Yeah.

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

And so you've got to have a way to document in the chart that that permission was given.

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

Yeah, no that's – you're exactly right. I mean, the strength of HIPAA is that you cannot provide PHI to anybody who is not authorized to receive it.

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

Correct.

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

And if your authorization is because a patient is through your relationship to a patient and particularly where you're relying on the patient authorizing you to have that information then there's got to be a way to document that in some way and maybe that's what we need to do is just say this is arguably more than a best practice it's the way you comply. But there is no one-size-fits-all way to do that.

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

Exactly.

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

Okay.

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

So what exactly are we going to say then?

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

So, what we're saying is, I think this is what we're saying, let me sum up here. So, in the easiest case, slide 7, the patient is making the request for view, download and transmit access for a friend or family member when they're doing this in – it should be documented when they're doing this in person or they're doing it through their own credentialed access to the portal it's a best practice to be able to send a confirmation notice to the patient that this is done. In the heart of –

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Deven I – Deven I thought there was a distinction between when they do it in person in what David said, in which case the patient is there no need for anything –

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

Okay, in person, it's not –

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

And then when it's done remotely just like when you do a bank account remotely there's a notice. So, you do it remotely you get a notice to your e-mail the privileges got changed.

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

Okay.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

And then the hardest case is the independent confirmation.

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

Right. Does that – thank you Leslie.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Sorry about that.

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

No, no, no, no you were right that is exactly where we were landing.

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

But I'm – this is David, I'm wondering if this is too granular. I mean, is there any harm if it also sends you a notice reminding you what you did in person earlier in the day so that you have it in your record? I don't know that there is any harm in – I just wonder why would we be so precise? We're saying –

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

No harm at all –

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

– provide –

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

No harm at all I just thought some people that was too hard to do.

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

Well, it wasn't that it was too hard it's just that it feels unnecessary as opposed to the possibility that someone used your credentials to authorize themselves.

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

I don't think –

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

This is Wes –

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

– showed up and did it in person but it wasn't really you, which actually happens.

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

Wes go ahead and then I heard someone else's voice but I'm not sure who so Wes go ahead and then we'll find who that other voice was.

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

I think John was the other one we seem to be on the same millisecond schedule here. What I understand is we're not prescribing definite requirements but describing things that "should" happen and so I think that if we say that – if we differentiated between in person and not in person there is nothing that prevents providers from also doing notification for in person changes but based on – they wouldn't be in any way disagreeing with what we're recommending if they did that.

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

Right.

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

Could I also – I hate to pick nits, we keep –

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

Well, John you love picking nits.

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

I know I'm an attorney just like you Deven.

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

Go ahead.

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

We continue to use the word "notice" and I don't want to predispose a method by which a provider might inform or do something to ensure that this is – whatever is being done is appropriate and I like, if you flip back to the slide 7, I like the fact that you originally – your slide 7 says out of band confirmation, you added the word "confirmation notice" and I just – I guess I'm a little leery about using the word "notice" and maybe I'm just – I don't know why but I just think this idea of just a confirmation can happen by a variety of different ways some of which we don't even know yet.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

So, John, this is Leslie, I was thinking notification might be a better word there because we don't mean actual notice, you know, we can't make sure that the patient actually gets it called to their attention. The distinction there between notification and confirmation however would be that confirmation requires a yes back from the patient.

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

Well, that's a good point too.

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

Yeah.

David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College

That's exactly the way I see the difference in those words and I think that's why we decided on notice or seemed to be deciding on notice for or notification for the easy case.

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

But I do like Leslie's point, notification says that we're going to give you something. I'm – on words, I apologize, I just – I want to give maximum flexibility and you're right not have to worry about getting something back which may or may not ever occur because patients typically don't respond.

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

No, I think it's very clear, this is Deven, that we are not suggesting the need for a back and forth in the easy case laid out on slide 7, but that we – and whether we use notification or notice let's – we'll come up with some language off line and we can noodle it over e-mail a bit not looking for some sort of – not suggesting formal process here but that the harder case is the one where we need to – where you do need the patient to confirm.

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

Right.

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

This is Dixie, but in that slide seven I think we made the distinction between the patient making the request in person versus over the portal and I think that's an important – you know, to split that into two. I thought that's where we landed.

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

Well, I think David McCallie was questioning whether that distinction – I mean, I think folks do feel that it's important to send that kind of a notice when it's done through the portal because of the possibility of spoofing which does not exist in person, but that there is not necessarily anything wrong with routinely sending a notification to someone even if they've established it in person and that was David McCallie's point that we're parsing things a little too finely.

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

Okay, okay, I got it, yeah we erred on the side of send the notice anyway, okay.

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

I mean, you certainly can, we think it's a good idea to send a notice at least when it's done remotely.

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

Got, it thank you, yes.

Kathryn Marchesini, JD – Policy Analyst – Office of the National Coordinator for Health Information Technology

Deven, this is Kathryn, I know there was some discussion about the level of detail and OCR and HHS authority. I can just speak to it in general I know someone from OCR is not on the phone, but just to let the group know that the HIPAA, the privacy rule requires covered entities to develop and implement reasonable policies and procedures to verify the identity of any person who requests PHI as well as the authority of the person to have access to the information if the identity or authority of the person is not already known and I'm happy to circulate – there is some guidance that OCR has issued around this in general that maybe relevant but just wanted folks to have that as they're thinking through this.

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

Yeah –

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

That's helpful, thank you Kathryn. We may want to specifically mention that as part of our recommendations just because the Policy Committee will need to understand that too. Was that David's voice I heard?

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

Yeah it was and I was just sort of seconding that that level of granularity, you know, stating the broad goals and the requirement that you have reasonable procedures in place to address these concerns is the level that, you know, we should stay at so, you know, for the broad question we agree that it's important to make it relatively easy to create proxy access so that people don't have to resort to sharing passwords but at the same time we have an equal obligation to make sure that it's a secure system that people can't easily be spoofed or hacked.

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

Right.

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

And those tradeoffs are going to change as technology evolves, as portals change from static things to mobile things, to goodness knows what lies in the future. So, I think we just have to be clear about what the goals are, what the priorities are and not be too precise about how to do it.

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

Right, good point, all good points. All right.

Micky Tripathi, PhD – President & Chief Executive Officer – Massachusetts eHealth Collaborative

So, Deven, so this is Micky, it sounds like we're in agreement that notification, out of band notification is at least a best practice and something that should be encouraged where notification is one way triggered by a change in access requested by a patient, we haven't got to the slide 8 yet I realize.

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

Yeah, well, I think we do think that on, you know, in the slide 8 harder case scenario that you need, that confirmation is essential and one could argue already be required because HIPAA requires you to confirm authorization, you know, you can't – you have to have reasonable procedures in place in order to make sure that any access to PHI is authorized, sort of seems to go without saying that if somebody claims that they want to access PHI as a friend or family member and that the patient has said it's okay that you need to take the steps to confirm that.

Micky Tripathi, PhD – President & Chief Executive Officer – Massachusetts eHealth Collaborative

Right.

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

–

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

Yes. So, I'm going to try to – so I also brought up the possibility that designation through the portal is something – is certainly one way to do this, is it something we want to encourage be part of EHRs or is that still best done by vendors as they see fit to serve their customers?

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

Explain the question slightly more precisely Deven? You mean this notion of –

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

Okay, sorry, so someone suggested on the Health IT Buzz Blog that it should be a required functionality of a portal that patients have the capacity to designate others through the portal.

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

So sort of so that the patient could completely manage the process is that what that means –

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

Exactly.

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

With the intervention of the institution.

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

Exactly.

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

Yeah, I –

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

This is Dixie I'd be against that because we would be, you know, encouraging something less strong than in person requests.

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

Accept we've already acknowledged that people could do it through the portal and if they're ID'd and credentialed –

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

No, what I'm saying is –

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

To have an out of band notification to confirm that.

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

They can but I would be against requiring that all EHRs have that capability.

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

Yes, this is David, I would agree, I think this is – again the goal is to make it easy –

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

Right.

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

And secure and the ways in which you do it could include self-provisioning as long as you can guarantee that it's secure but that's going to be form factor context dependent and is just getting into the micromanagement of products which I don't think we want to do.

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

Right.

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

Okay.

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

So, I'm in favor of the easy and secure.

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

I'm okay with easy, this is Judy, I'm okay with easy and secure as long as we realize that nothing is perfectly secure.

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

Yeah.

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

And if you have a rogue person in your family who when you recently left the computer they go over there, they sneak in, they look at whatever they want on your system, they see proxy, they decide to go for it and then they – and then they somehow monitor it so when the message comes back they're there to, you know, that could theoretically happen, so theoretically it could happen someone who walks in with your ID and says "I'm whomever" and they're not. I mean, if you've had a credit card stolen and then used you know that has happened.

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

Right.

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

Even in person. I've seen it happen in person when it's the wrong person. So, I think we have to be very careful that secure is reasonably secure, it can't be perfectly secure.

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

No, yes, agreed Judy. I think we're not – I don't think we're aiming at that.

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

And this is David, I certainly agree and, you know, reasonably easy has to be reasonably easy and it's balanced and it will depend on our technologies and it will evolve with devices and with, you know, the awareness of strong identifiers that patients may have in the future when they log in with NSTIC compatible devices and we have ironclad guarantees who they are you may change your balance point as we go into the future. So, I'm just avoiding being overly prescriptive –

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

Right I understand.

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

About the –

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

But it does sound to me like the question that I put on the table about whether such capabilities should be required is not one that we would recommend.

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

Right.

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

Okay, terrific. Okay moving on. On the issue of personal representatives, I'm now on slide 9 for folks who are following in paper form, and we're still on the point of authorization, which is do they have the authority to access the record.

We acknowledged in previous calls, and based on comments that we got on the Buzz Blog and also from Leslie Francis this article that there are lots of state law permutations on personal representative access and so it's difficult to have a sort of one-size-fits-all policy at the national level and that providers already should have processes in place to deal with how they grant personal representatives access to information and they need to think through how they're going to transfer those, if at all, to VDT access and whether they can or not actually probably depends on what the state law says the personal representative is permitted to access and whether they can accommodate that in view, download and transmit which may not be able to – which may give them access to more data than they might have a legal right to access.

And then the other issue that was raised is the capability to be able to store documentation of personal representative status, this was something that some noted would be highly desirable but I think it would be premature to require it is generally what we got from previous conversations.

But the Buzz Blog definitely included some thoughts from folks that, well, wouldn't it be ideal to be able to store some of what you need to collect from patients to be able to authorize all of this in the EHR.

So, then on the identity proofing and authentication piece here where I think we landed previously was that, you know, the patient has the capability obviously in the easy case where the patient is by face-to-face or through the self-provisioning functionality and the portal being able to provide the credentials or directly authorize access for another person, but certainly if it's – but our best practices that we went through previously on how to identity proof and authenticate patients to a portal either in person or remotely would apply in this circumstance as well.

And the only other note that I had on this slide is an issue that was raised by one of the – one person from Kaiser in public comment about authorization of access by patients to entities where there are concerns about the recipient of the data and what they're motivations are. Since that comment came in on the close of our call last week I didn't know whether that was something that folks wanted to talk about further.

I'm not actually sure now in thinking about it that it's really an identity proofing issue but maybe more one of the duress and authorization issue in some circumstances that we talked about earlier.

Any thoughts? Let's bifurcate those two so that we're not trying to smoosh them together. Any additional thoughts on recommendations for ID proofing and authentication beyond what we've got in the slides?

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

No.

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

Okay and then the second question about whether there are additional concerns that we think we need to address of – and again this probably is actually about authorization to access in circumstances where the access being granted is for some reason of concern to the healthcare provider.

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

Could you clarify that a little bit more for us?

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

I wish I could Gayle, it struck me – it was a comment that came in at the close of the call somebody was concerned that a patient might be being taken advantage of by a commercial enterprise or the data sharing practices of an entity that the patient was granting access to the record.

My own personal thought was that if you're not dealing with an incompetent patient and this is access that the patient wants to grant that there isn't anything necessarily more that we would need to say about that, but I just want – I didn't want to leave the comment hanging in case it had triggered some additional thoughts in people's minds toward the end of our last call.

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

Well, under HIPAA there are certain responsibilities and if a patient authorizes someone to have access whether it's a commercial entity for insurance reasons or life insurance purchase or something like that, that the physician has a responsibility to provide that –

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

Yeah.

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

And document it.

David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College

And this is Dave, I don't want to revisit the whole education issue, but to my mind if the patient grants access then the access should be given the only question is whether the patient understands what they're doing.

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

Right.

David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College

And, you know, they might want to give access for the purposes of the current treatment or to make it possible for someone to update prescriptions but they don't realize that they're actually giving their entire 50 year medical history to someone that's where I would be concerned, right, just make sure that they know what they're doing.

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

Right.

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

Yeah, it comes down to the definition of what is competent, because, you know, there are a lot of people that think I'm incompetent and they're probably right in some space so it's hard to know.

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

No I don't think so, but that's a good – but good point David Kotz, we have two David's we're probably going to have to be careful to use last names for the transcribers. We tried to wrap some of this into the education point that we still need to figure out a way to address that we began our call with, we'll figure out a way to do that.

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

I have a question, this is Dixie?

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

Yes, Dixie?

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

All of our conversation seems to be assuming that the entity that's requesting access is a human being, you know, in this day and age with the, you know, LinkedIn is requesting access to your contacts, etcetera, you know, there is a standard that allows that. Do the same rules apply if the entity requesting access is software?

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

Well, certainly the same HIPAA rules apply. A covered entity cannot grant access to PHI except as permitted by HIPAA. So, they're going to have to figure out whether that software is authorized to access it and if it's claiming to be acting on behalf of a patient they would need to confirm that with the patient per our previous recommendations and if they're claiming some other legal authority they have to prove that too.

And then assuming that they have the authorization to access then, you know, whatever are the credentialing mechanisms that you would take place to credential the software to access the record than that would have to take place.

I mean, we do tend to think these issue through in a human capacity but I don't know that the analysis is any different.

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

Yeah, yeah, I just wanted to make – to confirm that, now the way that – yeah, that protocol actually works it would require that the – still authorize it.

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

Yes.

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

I mean, given that they use that protocol, but, yeah.

David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College

This is David Kotz, I agree, this is a great question actually and Deven I think you're analysis is right on. I think we just should make that clear in our report that we anticipate non-human access requests as more and more cloud-based health analysis tools come on line and people want to use them please analyze my records and give me some recommendations this will happen.

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

Yeah. I'm sure you're right, we'll draw up some language to note that and we'll look very forward thinking. Thanks.

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

When those come in it's going to come in through API requests more likely than through the VDT portal.

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

Right.

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

And it will be Blue Button Pull for example, but it's the same issue regardless.

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

Yeah.

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

So, now I'd like to try to get to this issue that we were not been able to get to in our previous calls and that's the issue of the granularity of both access and function in the portal. How much – and I want – Judy if you don't mind me calling on you, you were the one to add granularity of function to this and so if you wouldn't mind clarifying what you meant by that.

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

Okay, so repeat kind of what I said last time?

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

Yeah, so it's what people can do in the portal, right?

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

Okay.

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

Is that what you meant by granularity of function like schedule appointments, add information, download?

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

Oh, you mean if they have proxy access what –

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

Right, exactly.

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

Okay, let me look it up for just a second, could I get right back to you?

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

No problem, Judy, sorry I didn't mean to put you on the spot.

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

Okay.

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

Yeah.

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

Let me look it up so I get it accurate.

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

Right, okay, thank you. So, on the granularity of access issue this is the one that raises the data segmentation issue that we have talked about off and on almost throughout our entire tenure.

Do we have the capability yet to provide people, to provide proxies and we use that term to refer to anybody who is authorized and credentialed to access a portal, do they get only the same access that a patient does or is there a way to grant – to provide more granular access and if there either is or there isn't it seems to me that as a threshold matter that what a proxy would have access to absolutely has to be part of education of the patient first of all and then second of all is relevant of course to the issue of, you know, whether you can give a personal representative access to the portal because depending on what they're legal authority is to access information and if there is no segmented capability and it's less than all that could be problematic. And maybe that's all we could possibly say here, but, you know –

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

Hey, Deven?

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

We had some comments on the Buzz Blog that suggested that it would be ideal if patients could grant access to only portions of their records versus the whole thing.

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

Hey Deven?

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

Okay.

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

Okay.

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

Can I go now?

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

Yes, you can.

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

Okay, there are different levels one level is read only clinical and for read only clinical you cannot edit medical information, you can't transmit data to others, you can't change any passwords, you can't remove other proxies, you can't enter daily monitoring data things like that. And for read only clinical you can schedule visits, exchange messages, etcetera.

Then there is another version that would be called scheduling and messaging and then you can see certain information like allergies, problem list, immunizations, no I'm sorry you can't see that information, you can't see any of the clinical information. You can't change passwords, you can't see unrelated bills, you can't remove other proxies, same thing as before.

Then you have the clinical scheduling and messaging and this is all adult to adult its different adult to children. And so for these you get to see the – your proxy who then can see an awful lot of stuff you get to see clinical scheduling and messaging but you can't transmit data to others, you can't remove proxies, you can't change passwords and you can't see unrelated bills.

And then there is a Power-of-Attorney which is really most of it and the Power-of-Attorney gives proxies a legal Power-of-Attorney and medical decision making power and they can do everything except change a patient password and see unrelated bills. So, does that make sense?

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

Yeah, so these are some levels of functionality that you offer in EPIC is that what you're –

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

Yes.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

And –

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

The point is that it isn't just one-size-fits-all.

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

Right.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Yes, this is Leslie commenting, you know, state laws vary on what they permit with respect to even the patient's own choice of personal representatives.

So, for example there are some states that have advance directive statutes that allow you to say what of your information you want your designated decision maker to be able to view and, you know, we don't have the functionality to deal with that now, but it is a reason to try to develop much more granular management tools just as in the case of adolescent records.

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

This is Gayle I –

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

The way I understand it, you know, a lot of portals just aren't open to adolescents in states where –

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

Okay, Leslie –

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Adolescents have different rights.

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

Let's try to keep the minor issues off the table.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Oh, no, I was just saying they –

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

This is Gayle, I also want to point out –

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

This is Wes –

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

Hold on let Gayle go then Wes you can go.

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

Okay.

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

Go ahead Gayle.

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

I just wanted to offer that the states do vary greatly in what you need specific and separate authorization to view. For instance, sexually transmitted diseases and HIV status, and certainly mental health information, substance abuse information all need separate and specific authorization depending on the state.

So, you know, then you also have – and Judy's flexibility is very key, I think that's, you know, especially you have to – so I don't want to high hand what vendors want to offer but I think we need to be very cognizant of state requirements.

Leslie P. Francis, JD, PhD – University of Utah College of Law; National Committee on Vital & Health Statistics

Right.

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

Thank you Gayle. Wes go ahead?

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

Yeah, I think that we have to recognize, I mean, first of all I thought the granularity of function discussion was very good and deserves a place in what we're describing whether those specific categories are shown as examples or something else. I think that that's a very useful contribution.

I am always concerned about data segmentation for privacy as a practical matter and I wonder if there is some way to describe granularity either to rule it out or to describe granularity of access in terms of granules that are really available to IT systems that is, you know, the problem is state laws tend to look at the topic of the information and that is what is very hard to even know.

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

Yeah.

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

But if we could recommend, you know, things like not separately billed or things that are based on information that systems are likely to have accessible in a deterministic way I think that would be helpful.

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

So, I suspect given – or it's certainly my own thinking on this topic number one I think having more examples about functional granularity in various portals that are out there is incredibly helpful. So, Judy's explanation very helpful, would love to get them from a few more of you so we can include some examples for the Policy Committee because that, you know, that's helpful it doesn't have to be one-size-fits-all at least with respect to that functional aspect of it and, you know, making sure that patients understand the various levels that your particular portal offers is part of that educational process.

I think the same in some respects is for granularity of access. Whatever you are able to provide in your portal patients need to be educated on what that means. So, you know, I don't want to – I don't know that we need to take on the issue of "yes, granularity is a good idea" "no granularity is not a good idea" or "yes, it's possible but not in the – maybe possible but not in the categories that state law currently provides" because in some respect the evolving nature of this and the contentiousness of the debate unresolved as it is today means that what we can do for patients and proxy access is to educate them on what the current reality is that they're facing without prejudging whether it's possible to give them a different picture or a better picture on a going forward basis.

And as for the state law issues if in fact someone, particularly in a legal representative status circumstance, if someone claims legal representative status access to the portal and the portal cannot segment the data in a way that only gives them access to what they're legally required for that the provider has to consider that in terms of granting the access. I mean, that's essentially what we said on the earlier slide.

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

Yes.

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

So are folks comfortable at least for now with articulating the granularity of access issue as one that touches on complicated issues of data segmentation and their complicated both from a policy and technology stand-point and then at this phase what's important is that patients be educated about what that proxy access means and what the scope of it is and that includes both with respect to access and function and that there are some very interesting possibilities out there at least on the functionality stand-point.

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

Yes that sounds good, this is Dixie.

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

Yes.

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

Okay, well that's terrific we have a little bit of wordsmithing to do but I think that we were able to get to some closure on a lot of this stuff or at least everything we were teeing up for your discussion today. So, that's great. So, we'll go ahead and do the wordsmithing off line and get it around to folks and we'll use the beginning of our next Tiger Team call just to finalize it.

I think the education point in particular is going to take a little bit of time because we want to word it in a way that essentially accommodates all of the good points that people made but without making it look like a burden on providers and we want to make sure that patients understand what they're responsibilities are too with respect to access to their own data.

We'll also pull up the recommendations that we had made previously on this issue with respect to transparency and education. Does anybody have – and I really would like to have some examples of the – similar to the levels that Judy just talked about so that we can offer – we can show to the Policy Committee what's out there. I agree with Wes I think it's a good picture. Micky, anything more to add?

Micky Tripathi, PhD – President & Chief Executive Officer – Massachusetts eHealth Collaborative

No, I thought it was an excellent discussion and we got through a lot. I was worried there for a few minutes but – no in particular I think you're right Deven that in terms of the education piece I think that that's going to be the trickiest part to write, it's clearly a need, it's clearly crosscutting across a number of different areas that we talked about but striking the right balance is going to be important.

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

Yeah. Any other thoughts from Tiger Team members before we open the call to public comment? We had a lot of it last time.

Micky Tripathi, PhD – President & Chief Executive Officer – Massachusetts eHealth Collaborative

I was going to say we're going to need the time for public comment.

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

All right, Michelle, I think we're ready, we're ready to hear from folks.

Public Comment

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

Operator can you please open the lines?

Ashley Griffin – Management Assistant – Altarum Institute

If you are on the phone and would like to make a public comment please press *1 at this time. If you are listening via your computer speakers you may dial 1-877-705-2976 and press *1 to be placed in the comment queue. We have no public comments at this time.

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

Okay.

Micky Tripathi, PhD – President & Chief Executive Officer – Massachusetts eHealth Collaborative

Wow. It's feast or famine.

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

As usual.

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

Well, thanks everyone and thanks to members of the public who listened in, we might hear more on the Buzz Blog, we'll keep an eye on it. Thank you all. If I don't see any of you at HIMSS, I hope I'll see some of you at HIMSS, but we'll gather back together on our first call in March which I think is March 10th. All right, thanks everybody have a good day.

Micky Tripathi, PhD – President & Chief Executive Officer – Massachusetts eHealth Collaborative

Thank you.

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

Thank you.

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

Bye-bye.

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

Come to HIMSS, come to Florida.

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

Thanks.