

**HIT Policy Committee
Privacy and Security Tiger Team
Transcript
February 10, 2014**

Presentation

Operator

All lines are bridged with the public.

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

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

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

Here.

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

Hi, Deven. Micky Tripathi?

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

Here.

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

Hi, Micky. David Kotz?

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

Here.

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

David McCallie? Dixie Baker?

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

I'm here.

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

Hi, Dixie. Gayle Harrell? John Houston?

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

Here.

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

Hi, John. Judy Faulkner?

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

Here.

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

Kitt – hi, Judy. Kitt Witner, Kitt Winter, I'm sorry?

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

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

Larry Garber?

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

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

Leslie Francis? Wes Rishel? And are there any OCR staff members on the line?

Leslie Francis, JD, PhD – University of Utah College of Law – National Committee on Vital and Health Statistics

I am – this is Leslie Francis, I don't think you called my name, or if you did, it came through garbled.

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

Thank you Leslie. And are there any ONC staff members on the line?

W

Hi.

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

Okay, I'll turn it back to you Deven.

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

Okay, great. Thank you everyone. On our agenda today, we will be continuing to discuss issues around access to the view, download and transmit portals by friends, family and personal representatives. But before we launch into that I want to turn to Joy Pritts, the Chief Privacy Officer for ONC to provide us with a little bit of an update on what – she provided an update to the Health IT Policy Committee that was similar to the update that she did for us on the Tiger Team call a few weeks ago. And I wanted her to have a chance to talk a bit about it for those of us who were not in attendance at the Health IT Policy Committee or on the phone. So Joy, are you ready?

Joy Pritts, JD – Chief Privacy Officer – Office of the National Coordinator for Health Information Technology

I am Deven, thank you. For those of you who were present at the meeting, I don't mean to belabor the point, but for those of you who weren't, the report was very well received. And there was a definite recognition by the Policy Committee as a whole, that this workgroup does a lot of hard work, in a very efficient and thoughtful manner and that your efforts are appreciated. And there were a lot of very nice comments to that extent. There was also – it was also, it turns out, to be an opportunity for us to give a good summary of what the Tiger Team has been doing to the new National Coordinator, who was present for the entire Policy Committee meeting, including this portion. And she was quite pleased to hear the summary, and it helped catch her up to speed very quickly. So that's the report from the field.

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

Thank you Joy. And we really appreciate the support that we get from your office and also from the folks at MITRE, who help us prepare for meetings and I know helped pull together all of the recommendations that we've done over the past several years so that you could pull them together in that report. So, thank you. Does anybody else have any thoughts or comments to add on that topic and then we'll stop patting ourselves on the back and move on to more work? All right, thank you. So now we'll continue the conversations that we've had on this issue of providing access to view, download and transmit patient accounts by – for family and friends and personal representatives, as they're defined in HIPAA.

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

Deven, before you get started, it's David. I just wanted to tell you I joined late. I missed the roll call, sorry.

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

Okay, that's okay. Thank you, David, I'm glad you're on. Is there anybody else on the call now who missed roll call? Okay, terrific. Just a reminder that we are, at least for this phase of our conversations, focusing on adults, so this means access by another adult to an adult's view, download and transmit account. We are going to deal with the issues of the access to minors health information, but we'll do that all collectively in a separate consideration of minor's access issues generally, which we have teed up in our 2014 work plan. And we're continuing to proceed with the use case of access to PHI, which is protected health information, through the Stage 2 view, download and transmit capability.

So, what we did in the interim, since our last call, was do a bit of outreach to our own Tiger Team members, to provide some additional background for us. And we also were able to post a very quick Request for Feedback from the public on the Health IT Policy Committee's blog, which is called the buzz blog. And we got a number of very helpful comments on there, I thought. So in the materials that were circulated in advance of this presentation, it included some information provided from Judy Faulkner and her team at EPIC, a cut and pasted sort of back and forth from our Tiger Team members, Larry Garber and John Houston on how access by others to patient accounts is handled within their own institutions. And, as always, we hope to be able to rely on Tiger Team members, David McCallie for the experience at Cerner, as part of this discussion. And in taking a look – and we also had the law review article that Leslie Francis had written and circulated to us promptly after our last Tiger Team call.

So having looked at all of the comments that came in, I – it looked to me like we could group these – the issues that arise here in three buckets. One is authorization to access by friends, family and personal representatives. Identity and authentication, we had initially said we weren't going to take that issue up, but many people commented on it on the buzz blog. And so I think it's worth taking a look at the prior recommendations that we had processed through the Policy Committee on the identification and authentication issues for patients for view, download and transmit. And to see whether those prior recommendations need any additional – need modification or need some additional components for the circumstance of access by another adult to a patient's account. And then, of course, the issues of – which we raised on our last call, about is it all or nothing. Or is there some way to offer some granularity of access to certain parts of a view, download and transmit portal account and how do we handle that, acknowledging that some of this may be tied in with issues involving data segmentation, for which ONC has ongoing pilots.

So, I think it probably actually works best for us to begin our conversation trying to sort of segment the issues again, into those three buckets. And I'm really hoping that we can start to land on some conclusions on this issue on this call, that we can then wrap up on our next call so that we can report this out in March, to the Policy Committee. So, one of the things that occurred to me with respect to the first bucket of issues around authorization to access is that perhaps the easiest case is one where the patient herself or himself requests that a family member or a friend be given credentials to access the account. We know already that certainly patients will share their own credentials in order to allow access to an account, but it is also the case that under HIPAA that an individual can essentially authorize someone else to be provided access to that account. And with that authorization, there certainly is the sort of legal permission that an institution would need in order to issue credentials to a patient.

That's a bit different – that's more than a bit different arguably, from the circumstance of a personal representative, which is someone who has the legal authority under state law, to consent to medical care for an individual patient and therefore, under HIPAA, stands in the shoes of that patient, with respect to a right to access. And in that circumstance, the institution, the medical facility or the healthcare provider who's being requested to grant access in a circumstance of a personal representative, will have to do the work to assure that this person is, in fact, authorized under law to access the account. Frankly, just as they would need to do in a paper-based world, they would need to do the same here. And there are state law issues that are in play here, there are state law issues that have to get resolved when requests come in for access to data for paper records, too. The difference here being that what's being requested is electronic access.

And then one other question that I slotted into this authorization to access bucket is one that was raised by some commenters on the health IT buzz blog, which is, and I think Larry, either you or John or both of you brought it up as well. What do you do in a circumstance where you have an incapacitated patient and you have a family member who isn't a personal representative, but is requesting access? And in that circumstance, certainly HIPAA permits a healthcare provider or healthcare institution to provide access to relevant – information that's relevant to the patient's care, but whether that would be enough for everything that might potentially be in the portal, depending on how long that portal's been populated, is a legitimate question. But it is something that the institution – it's permissive access, it's something that the provider would have to work through.

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

Deven, this is Larry. One other thing that crossed my mind is also what happens after a patient dies and family is looking for access to records –

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

Right. Right, okay, good point. And you know what, I didn't – refresh my memory, HIPAA just recently made a policy change on that, with respect to the privacy of records of people who are deceased. Umm, do we have anybody from the Office for Civil Rights on the phone, or Joy? Do you and Kathryn remember off the top of your head, or anybody else, what the change that was made there –

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

That was only that record's duration – a privacy duration of 50 years. I thought after 50 years, they were no longer –

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

Okay, so it's 50 years. All right. Thank you, John.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

Yeah.

Joy Pritts, JD – Chief Privacy Officer – Office of the National Coordinator for Health Information Technology

For other decedents, it goes back almost to the personal rep issue as to whether the person is authorized under state law to obtain those records.

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

Right.

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

But that also got – this is Leslie Francis, that also in some cases, depending on state law raises the segmentation issue.

Joy Pritts, JD – Chief Privacy Officer – Office of the National Coordinator for Health Information Technology – Health & Human Services

Leslie, you faded out there and we couldn't hear your last statement.

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

Oh, sorry. What I was saying was that under state law, in some cases that's going to raise segmentation issues, because personal representatives may or may not be, depending on the state, permitted to see everything. In fact, there are some states which specifically have advance directive statutes which permit the patient to say whether or not their personal rep has access to all or parts of the record. So that's an additional complication.

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

Yes. So let's take the issues of personal representatives and put them to the side for a moment, and address what is arguably the far simpler case of me as a patient saying, I would like you to give my spouse access to my portal account through his own credentials. Seems to me that when that request comes in, especially if it's the patient that asks for the request to be granted, as opposed to the other person coming in and saying, give me the access to this person's account, that that's a probably fairly easy case. That as long as you've sort of documented that that request comes in, in some way shape or form, you could provide the credentials to another person at the patient's request.

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

As long as – this is Leslie Francis, as long as you're sure that's coming from the patient.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

Well, there are ways – technical ways to deal with that. The patient already has an account.

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

Right.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

What we do is, we'll grant the other person an account and let the patient actually complete the proxy access. They actually, within our portal, can go and decide to provide that access or frankly, it can revoke it if they want to as well.

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

So you provide a technical mechanism for designating that.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

We will grant the proxy his or her own account –

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

Okay.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

– and then allow the patient to decide to create that proxy relationship.

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

Right, but I think – I thought Leslie's point was, you had to be certain as an institution that in fact this was access that the patient wanted to grant.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

– the patient –

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

That it was the patient creating the proxy account, yeah.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

Right.

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

I mean that the patient saying it's okay for the proxy account to be linked.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

The patient actually goes through and does that –

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

If you're worried about the patient being forced against their will to do it, Leslie, it sounds like.

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

Well, that is one of the worries I have, yes.

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

Well the other issue is, I mean, if the patient's son is John Smith, I'm going to give access – let John Smith have access to my record, you need to be sure that they're giving access to the right John Smith as well.

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

Right, well let's hold on to that for a minute to when we get to the identity-proofing piece of it.

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

Sure.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

I mean, I – unfortunately the enemy of good is perfect and I think that...we have had this system in place for a while and we've had – not had any issues, and I know some other people have expressed concerns. But it seems to work well because the patient – it's then within the patient's hands, who he or she decides wants to have access – who should have access and can revoke it as well.

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

John, if that is done remotely, that is not in person, is there any follow up with the patient to make sure so, for example, a phone call to the patient, just like when you're on certain other kinds of – your bank account for example. If you make a change in your password, you get a separate email to that effect, letting you know that you've done that.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

Unless I misunderstand our – we're allowing the patient to actually grant the proxy. So –

Leslie Francis, JD, PhD – University of Utah College of Law – National Committee on Vital and Health Statistics

Right, but so –

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

– he or she –

Leslie Francis, JD, PhD – University of Utah College of Law – National Committee on Vital and Health Statistics

– that the patient granting, what I'm asking is, the patient grants proxy, is there any kind of – if the patient does that remotely rather than in person, is there any way that the patient then gets a notice that that's been done. Because it's certainly possible that a family member would once be granted access through the user name and password, and then keep that user name and password or be familiar with how people do their user names and passwords and get in.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

I mean, I think the user's always responsible for protecting their own passwords and their user names, but again, this is all being done by the patient user, him or herself. So they ultimately can decide who they want to have access. I mean, they're doing it –

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

Well, right, what I'm asking is whether you're sure it was done by the patient him or herself. And one way to do that, when you have other kinds of accounts, if you make a change in it, to your email of record, they send an automatic email that says, oh, be aware that you just changed your whatever it is.

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

Yeah, this is David. I agree with Leslie, it's a so-called out-of-band notification that is on a different channel than the one that was used for the granting of access, just as a double-check. It's a pretty common practice in high-value authorizations.

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

Right, even when the administrative function is performed in a self-service mode, like we're talking about.

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

(Indiscernible)

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

Right, when it's done remotely.

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

This is David Kotz and I agree with both – it's standard practice in any place where you have a high-value. Sometimes the out-of-band is an email, sometimes it's a physical letter that's sent to you. Sometimes it's a phone call. It's just a confirmation, that way if somebody did get the password of spoof a patient, then the patient at least knows that something has been changed and can go contest it.

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

That sounds – I mean, we have in other circumstances, in fact you could see – this is Deven – on some of our prior recommendations with respect to ide – even in the identity proofing aspect when you're doing it remotely that I think we mention an out-of-band confirmation, just to be certain. I may be mixing apples and oranges here, but I definitely remember this coming up. It's like a – it's a best practice, potentially, to be sure that you're not – particularly in circumstances where you create the automated capability for the patient, while in the portal to actually designate additional persons for access as opposed to requiring a face-to-face.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

Correct.

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

Yeah, I think it's a couple of slides in, Deven, in the authentication –

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

Yes, I thought –

Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth

Collaborative

– remote, it was in the remote identity proofing, I think.

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

Ahh, it was sounding familiar. So, okay, well that all – I mean, all that of that sounds inherently reasonable, and the fact that this is generally how it appears to be done both remotely and in person among the representatives we have here on the Tiger Team, as well as the feedback we got on the health IT buzz blog, that's incredibly helpful. Now, in the case of a personal representative, where you have someone who has the legal authority, and they, themselves may be presenting to the healthcare institution or the provider and saying, I am this person's healthcare personal representative or they're probably using another state law term, power of attorney may be one. And you need to give me the access, this is an area where as Leslie points out, there are state law implications to what types of access a personal representative might be able to get.

HIPAA's fairly clear on it, typically HIPAA preempts state laws that are not as protective, but it's not clear whether the – how that plays out in the context of personal representative access as opposed to individual access. But either way, it occurs to me that we want to be careful not to overthink this, because organizations presumably have to have processes in place for demonstrating personal representative status in a paper-based world, that they would have – and those processes could be used in this context before account credentials could be given. Does that make sense? I mean, this is a much more complicated set of issues, around personal representatives, because there's potentially more to be proven for authorization, and it's very likely that the person who's presenting and asking for the credentials is not the patient, but the personal representative herself. But is there anything that's different about the EHR context, assuming people aren't allowing people to self-designate automatically online for access, that we need to think through in the VDT context, because it's digital?

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

Deven, this is David. I think it goes without saying amongst this group, but it might be worth actually embodying in one of our principles that shared accounts are not a way to solve this problem. I mean again, I hope that goes without saying, but obviously in some cases, that is a practice, where people just share their passwords.

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

Yeah, and we've – we talked about this a little bit on a previous call, knowing that the institutions and the providers are not always going to be able to control what the patients do with their own user names and passwords, right? So if they share it –

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

Right.

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

– that's at their discretion, but that shouldn't be the only avenue for getting a shared account in circumstances where there's a desire for a shared account on the part of a patient, or there's a legal relationship that designates the need for a shared account.

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

Yeah – I missed the previous call and I'm sure you discussed it then, my apologies.

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

No, it's okay, because it's actually worth mentioning, because we have had a lot of conversation about this issue and we should be reflecting all of the main points, big and small, in a report out on this to the Policy Committee. So, along those lines, just in case it wasn't clear earlier, what I'd like to do with our second call this month is to essential – what I'd like to do on this call, let me say first, is to start crystalizing those major themes. So it's good that you brought that up, David. And then we would put those together on slides and go through it one more time on our next call, and report out on this in March.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

This is Dixie. The other thing, relating to what David said, I think it was Larry, in that cut and paste back there, conversation. I think it was Larry that made the really good point that it's not just a bad practice to share your passwords, but it actually can be harmful to the patient because the clinician then may be unsure who is providing information to them, you know, who – where's this actually coming from. I think in terms of best practice, it would also be a good best practice to advise people of these kind of health – potential health risks of sharing passwords.

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

Well, and that's im – if you've got a portal that has intake –

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Right. Exactly, right. Yeah, um hmm.

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

Which will be increasingly common, I think, with medical devices? David Kotz.

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

Yes.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Yeah, yeah and with upload of consumer data, yeah, it'll become increasingly common.

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

This is Judy and one of the things I think is important is for the healthcare organizations to make it easy to get proxy access, because otherwise, people will look at the hurdles they have to go through and just pass their information on to their spouse. If it's easy, they won't do that.

(Multiple speakers speaking over one another)

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

Yeah, sometimes they require paper consent, sometimes they require personal showing up at the organization. Sometimes the proxy has to complete a paper application and fax it to the HIM Department. Lots of different things happen that make it difficult, because I think some of the compliance departments are nervous about what they can and can't do. And so I think the more that we make it easier and eliminate their concern, the more people will actually use proxies instead of sharing.

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

Yup.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Yeah.

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

That's a really good point, Judy. So, but are folks in general sort of, if we pull together some statement about personal representatives to the point of, proving personal representative status and the degree that that means access to information, which also may be dependent on state law, is an issue that providers need to grapple with in the paper-based world as well. And they would need to follow those processes before designating access to accounts through VDT. I mean, I don't know what else – what more we could say here, given the state law issues in particular.

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

This is David. It seems to me that we're going to get down to the technical details of what's acceptable authorization and authentication, because the policies are already established.

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

Right. Yup.

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

Is it the case – this is David Kotz, that a proxy who's in one state acting could view records of a patient who's in another state is somehow subject to both state laws or neither or is that clear?

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

Oh my. Wow.

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

It's probably the holder, isn't it?

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

You know, my elderly mother lives in a different state than I do, so –

Leslie Francis, JD, PhD – University of Utah College of Law – National Committee on Vital and Health Statistics

Yeah, it's probably the state law of where your mother lives. This is Leslie Francis. But, depending on – because usually it would be the state where she lives that would be the state where advanced directive laws would apply. But then if she comes to visit you, you're right, it's a mess, potentially.

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

Let's just do away with Federalism and our job would be easier.

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

Or do away with state differences, one or the other.

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

Right. Well you know one – that's – it will be the case from a practical standpoint, David, that the institution – the holder of your mother's records will be most familiar with the law that governs their actions. And so if you had, for example, a legal document that gave you power of attorney or designated representative or legal proxy status in one state, but it wasn't – it didn't look familiar to the institution that was actually holding the records that you needed to access, you might have to go through a similar path there. But it is, yeah, it does point out that this is an enormously complex area for which the differences in the state law make things more complicated.

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

Yeah, the Model Act does recommend portability of advance directives and so on, but –

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

Yeah, that's –

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

– not all states buy that.

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

Yeah, I think the most that we can do is just acknowledge the difficulties here and just – and the fact that essentially providers have to figure out at least at present time, given the state of the law, have to figure out how to deal with this on paper. And that those processes are ones that are probably the ones they should follow in the digital context.

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

But we want to encourage, I think we want to encourage the states and providers to provide some kind of a common denominator. I should be able – if they're providing an electronic proxy registration and authorization process, I shouldn't have to visit another state and show up in order to do that.

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

Well, so I think, I mean and David, that's a really good point. So one of the things, if you're mothers not to the point of being incapacitated, again, we're doing a hypothetical here.

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

Correct, right.

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

That she could, in fact, authorize you and that would be – and you wouldn't need to present that legal paperwork. I think it gets more complicated in a circumstance where the patient isn't able to make that wish known or is not, for some reason or another, or is otherwise incapacitated, and then you have the personal representative trying to essentially prove their legal right to authorize those records. And in the case where you have legal documentation, that's sort of one set of pathways. Then potentially the other set of pathways, if you qualify as a family member involved in the care, is it the provider who would be permitted to grant you access, but they have to think through whether that sort of fits under the HIPAA friends and family provisions, which permit sharing of rele – content that's relevant to the patient's care.

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

Deven, another complication is that many, many states have default personal representative statutes as well.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

Yeah, but most hos –

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

– that Leslie.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

– but most providers typically have, you can do an ethics consult and they'll try – I mean, this happens pretty regularly that they have to deal with these types of issues.

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

Right.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

I mean, unless there is some debate as to who has the rights and responsibilities or if somebody's rights have been restricted at the – there's some dispute in the family, I mean that's – hospitals deal with this all the time and I – so.

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

Right. John, this is Leslie, I completely agree with you, but you could easily have a situation like the following. A state could have a family consent statute in which the spouse is the designated personal representative, but the spouse is travelling and there's a family member who's in town. And that would come under the family member piece of it and the spouse though, even though not having power of attorney, could be the actual legal personal representative.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

Sure. But again, unless there's some issue amongst the family, I would think that the team caring for that patient will try to understand the wishes of everybody involved and try to –

Leslie Francis, JD, PhD – University of Utah College of Law – National Committee on Vital and Health Statistics

Oh well sure.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

– rights are. So, okay. So I'm. I guess – we're probably getting off on a tangent, my apologies.

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

No, it's okay, I mean, there are probably, it's okay for now. I think there are ultimately lots of gradations of this, in terms of use case scenarios. I think we do our best to sort of put forth what a set of sort of best practices or procedures would be for dealing with all of these. But recognizing that there could be lots of permutations of this that we probably can't – and that we hope, frankly, that organizations have some resources to help them think through some of the stickier issues. Those in larger institutions, like UPMC, with the capacity for ethics consultation, that's enormously helpful, maybe not as applicable to smaller practices. And also, keeping in mind that we're talking about access through view, download and transmit, right. So if you're not comfortable providing an account – credentials to a digital account for a family member for one reason or another, there's always the option of providing them with the backstop of access to records through the good old-fashioned way, which is here's a copy. So, but obviously we're endorsing the use of the portals for a reason and we want patients and their family members to be able to utilize them to the maximum way possible, in the ordinary circumstances.

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

So this is David. Does it boil down to a), you need to have a proxy capability, b) you use local policy to determine who has access to that proxy and c) we need to specify minimum authentication standards or best practices to prevent abuse of that proxy. I'm – how are we going to get any more detailed than that, I guess is what I'm saying.

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

I don't know that we could get any more detailed than that. And you're – and point number three, on identity and authentication was where I was going to take us next, which is basically to take a look at what we had previously said on how you would ID proof and authenticate patients for view, download and transmit accounts. And see what more would need to be added to extend to credentials for others, whether they're friends and family – friends and/or family designated by the patient or in personal representative status. So if folks don't have any further issues to discuss on the authorization aspects of it, we'll move to identity and – identity proofing and authentication.

All right. I'm going to – I'm having some slight computer issues so if I can ask the folks at Altarum to advance me to the next slide. Thank you – more slides than that. Okay, I'm good now. Thank you. So these are, in very small print apologies for that, they came right out of the slides we used before. So, just to refresh our recollections about wh – and also for our new members, who may not have actually seen these before. These are the most recent set of recommendations that we had provided to the Policy Committee, they were endorsed by the Policy Committee, on the issue of patient identity proofing and authentication. We called on ONC to develop and disseminate best practices for patient access to portals. We noted that the best practices had to essentially be – have the protections commensurate with risk, to be relatively easy to use for patients and something that they would be willing to do. Leverage solutions in other sectors, like banking, solutions accompanied by education that make the processes transparent to the patient, but that the opportunity to leverage more scalable solutions, such as identifiers established through the National Strategy for Trusted Identities in Cyberspace, should be taken under consideration. And that the solutions might need to evolve over time as technology changes.

Really, the reason for these principles was to make it very clear that in the case of patients, you have to give them a solution that is something that they can easily use, you don't want to set the bar too high on the security end. On the other hand, you also want to – you don't want to throw security out the window, which is one of the reasons why we were enamored with the solutions that are used in online banking that many patients are very familiar with. And here's where we included out-of-band confirmation in order to confirm that in fact there was a desire to establish the account.

We went through some best practices for identity proofing noting that in-person identity proofing, which can be used more easily in healthcare than in other settings because you can establish an account, for example, when a patient comes into the office. In-person obviously gives you the most amount of assurance, in most cases, but that it's not always convenient for patients to establish accounts this way and that allowing some remote proofing methodologies are helpful, particularly for people for whom coming in to the office to establish an account might be onerous in some way. And we had some potential methodologies for remote identity proofing, reusing existing credentials, third-party knowledge-based authentication, which is usually hiring an outside service provider to do this for you, verifying it yourself over the phone, for example, against information that you have already in-house and using technology like the use of personal computer cameras to confirm an individual's identity. Now this was again in the case of – we were talking about patients here, who the office would presumably be able to recognize through the use of a camera.

And then on the authentication piece, we strongly encouraged more than just user ID and password for authentication purposes. Here was where, just to quickly summarize, we were found some of the solutions used for online banking to be very appealing, additional knowledge based questions, machine-to-machine technical controls that recognize a customary device, for example. And then outside confirmation, emails to known addresses or a phone call or a letter to request confirmation. So these were all the sort of identity proofing and authentication techniques that we came up with for patients themselves for identity proofing and authentication. How well do they work when you're talking about the circumstance, let's take the easier case where the patient wants to – wants credentials to be provided to a friend or a family member and specifically asks for it and then we'll take up the personal representative issue next. Are the recommendations the same? Can you do this? Do you require in-person? Is it possible that you could also do remote proofing if you had a sufficient amount of – had sufficient ways to remote identity proof a friend or a family member of the patient? We've already said that the out-of-band confirmation in this circumstance can be a very helpful way to confirm that in fact, the patient actually did want to establish the account for this additional person, particularly when they're able to opt-in to doing so on the portal.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Deven, this is Dixie.

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

Yeah.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

It seems to me, and maybe you guys will talk me out of this, but it seems to me that if we assume that the patient themselves has been strongly identity proofed, so you know who it is. It seems to me if they gave you the name and email address of another person and said, I want them – I want you to give them an account that they – then the patient has taken on the identity proofing, they're giving you the email address, it seems to me we should – that should be allowed. And then you would follow up with confirmation just like out-of-band confirmation. It seems to me if they know the entire email address of somebody and the identity of somebody, that that should be enough.

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

Hmm. What about –

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

Well – and this is Larry. So on one hand I think that sounds brilliant, but on the other hand, I recognize number one that we're trying to protect our patients from making mistakes. And so as I think through this, I think patients may not realize that sometime the person that they got an email address from may actually have that shared by the spouse. Because I have patients who they have one email address for the husband and wife, and the patient may not be aware that that situation exists when they got the email address from one of the family members and now, all of sudden, two may have access to the patient's record. And then the other thing is that there could be transcription errors where someone copied that address wrong and now potentially you're giving a complete stranger access to this patient's record.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

But if you ask them for the email address and their mail address both, first of all, it would – I think it would probably bounce if there were transcription error. The first problem, I think is always there, even if you had the person come into your office and verify their identity, there's no way you can make sure that they aren't sharing that account with other people.

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

True.

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

But I think – this is David – I tend to be skeptical of the reliance just on an email address, reaching the right person and that that would be the sole credential necessary to grant access. I think –

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

That's not what I said David. I said the email address and the address, the mailing address, maybe I wasn't that clear, but if they were able to give you both.

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

This is David Kotz. I'd be very skeptical, I think that's a relatively easy thing for identity thieves to obtain both of those –

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Hmm.

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

Yeah.

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

– they're very public and well known. You can look them up in the phone book.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Yeah but would the patient then go in there and present it?

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

I thought we were talking about identifying the representative or proxy.

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

No, we're trying to take the –

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

Just the patient?

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

No, we're trying to take the first example first, which is not a personal representative situation where someone comes and claims to be –

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

Right, right.

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

– a representative, but rather the patient says, I want to grant access to my son. I want to grant access to myself and here's the –

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

Oh.

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

– here's their email address and then what –

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

I think – this is Leslie Francis – I think you need to make sure that there's direct communication with the patient on that and I even know this about having it be out-of-band – I mean, I would be potentially okay with it out-of-band in real-time. So for example, a phone call, but –

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Oh yeah.

Leslie Francis, JD, PhD – University of Utah College of Law – National Committee on Vital and Health Statistics

– the wait out-of-band makes me very nervous.

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

This is David. The other thing is I think most of our systems would create a proxy user that would for all our practical purposes be just like any other user created in the portal. And I don't think we should reduce the security standards for the creation of a portal account, even if the only reason for that account is so that it can be proxied to another person. So whatever the minimum standard is for creation of portal accounts ought to apply to the proxy.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

I totally agree with you David. Good point.

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

Yeah, I agree, that makes sense, but then the patient wanting to grant access, I'm sorry, I thought we had been talking about requesting access, but granting access, then they need to know the identity in the portal of the person –

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

Right.

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

– to whom they want to grant access. And that's fine, they can call up and say, what's your user ID and just type it in, right?

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

Right, or they could say to the provider, could you enroll my requested person I want to share with and the provider send a snail mail or an email and starts the process, whatever that process is –

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

Right.

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

They're not already registered.

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

– to generate the portal.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Yeah, you're right.

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

Yeah.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Yeah, that's a good point.

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

Because it's going to be unlikely that a stranger who's not known to the practice can get an account created just by asking for one, right? They're going to – it's going to have to be driven from within the practice in most settings, I think.

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

Well right. I mean and that's really the second scenario that David Kotz I think was starting to talk about, which is not where you have the patient herself requesting that access be granted. But instead, you have that third party coming forward and saying, I'm the son, I'm the spouse, I'm the personal representative and I need access to Mrs. Brown's account.

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

Correct, that's the harder case.

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

Yeah. Because then not only do you have to prove they're legal authority to access, but then you also have to go through the steps of identity proofing, that they are who they say they are.

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

Yeah, but even in the simplest case, I as a patient walk in and say I want to give my son access to help manage my care and my son is not a member of that practice, doesn't have a record there. It would typically be the practice that would initiate the enrollment of the son with a user name, validate their identity, and then connect-up the proxy link, rather than the son being able to just come to website and create an account. I don't think most of us deploy it that way.

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

Yeah. I would –

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

So for – I guess what we're saying is that for all cases where the patient is cognitively intact, they can initiate the process by asking the provider or logging into the portal and connecting to a pre-existing account.

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

Yeah.

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

And that reduces the hard problem then to the case where the patient is not able to initiate that and ne – we have to somehow have the proxy start the process and then somehow be validated both legally and identity-wise.

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

That's right. I think that's right.

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

Yeah, I think that makes sense.

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

Yup.

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

And I think the tricky thing, the tricky thing here is that our – is, and this may be getting a little bit off subject, but it's worth keeping in the back of our minds is that the use of third-party knowledge-based identifying services is tricky when it comes to family members, because it's pretty easy to –

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

Yeah.

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

– know the answers to those questions. I've had that problem with my own accounts several times and I think from comments made in one of our offline threads, it was not an uncommon experience.

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

Well, and not only that, but we certainly, we're not talking about minors on this call. But there were examples provided of how easy it would be for – in the case of a parent and an adolescent to be able to answer all the questions correctly, if there are even good knowledge-based questions that can be asked about a young person who's sort of barely in commerce.

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

Yeah, yeah.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

I – this is John Houston and I – in so many ways I agree with everything that's being said, but I see the operational side of things here. Which is that dealing with the family that's quite upset that they're daughter in California can't get access to the mother's medical record who's in Pennsylvania and the hassles associated with it and all of that. So we do have to ensure that whatever we recommend is practical and does take in consideration these types of distance relationships that might make it more difficult to do everything we'd like to do in terms of identity proofing and authentication or by law, authentications different, but identity proofing. And I just – I hear it all the time and it's something that you just need to be mindful of.

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

Yeah. No, I know.

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

And this is David Kotz, I'm a little naïve on this but if we take the electronic world and the distance out of the equation here, and if I walk into the hospital where my mother is a patient and present myself at the desk, having no prior relationship to that hospital, and claim to be her son, what information does the hospital need from me that would first of all, prove my identity and second of all, prove that I'm her son? Name is not sufficient, right. So I don't understand how that works in this sort of old world, let alone how we would do it in the new world.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

In the old world, if you went to the Medical Records Department, they'd ask you for a signed authorization for release of medical records. If you went to the floor where the patient's at, obviously the physician or somebody else on the care team would have the opportunity to sort of look you down, stare you down and maybe assess the patient and ask the patient what's – so there would be an opportunity to do some type of assessment of who you are. I mean I think that's typically what they do do.

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

And the signed authorization just lists my name, doesn't it?

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

They may ask you for some other type of proof of identity, but it –

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

Right, but I can – if the name on the – if it happens to be John Smith and my name is John Smith, and I can show a driver's license that shows that I'm John Smith –

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

Right –

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

– it's not – to me – it's not clear to me that we have a very robust system there as it stands.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

You do not have a robust system today for paper medical records.

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

You don't and this is Deven, and frequently people, family members are told that they can't have access to those records.

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

Right. So I guess where I was going is that it's not like we have a great system that we somehow need to map into the digital world.

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

Right. Right, we have people doing the best that they can and we're trying to move it into the digital world.

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

Right. Okay.

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

This is Judy and as I'm listening to this, I think what we're really talking about is the balance of risk.

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

Yes.

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

On the one hand, you have no proxy at all, it's so onerous that I don't want to go in, have to go in and have to bring the proxy with me, both of us go in, what a waste of time. So that's one thing which is, there's no proxy...the other thing is that, in fact the easiest way is, I'm not going to bother doing that. I need a refill on my meds or I feel sick, here's my password, just get on the system –

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

Yeah.

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

– because, and the reality, how many times is it that you want someone to help you with something and you're just saying, here, you do this for your own portal access, here's my codes, do it for me. And that's likely going to be what happens if we make it hard, that they will share.

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

Yeah.

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

And then we talk about how do we have ironclad validity. I think those are – the risks that we're talking about.

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

Right. Right. And as is frequently the case with some of these issues when we take them up is that we can put forth some reasonable steps to minimize the risk, without making the burden too onerous. But at the end of the day, you're not going to take it totally off the table and the more you inch toward risk reduction beyond what you can reasonably do through the proactive steps that we've talked about today on the call, then you do create more of a circumstance like Judy put forth where patients just they don't want to go through the process of establishing a second account. They just give away their user name and password.

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

You know this –

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

This is David. I agree with the concerns if we make it too hard, we get the unintended consequence of a lot of people get burned. On the other hand, I can't imagine that creating a proxy account should be done with any less security than creating any other patient portal account, for all of the horrible consequences that could happen if we make it really easy to create a proxy account simply because you're going to be a proxy. That would be an invitation for abuse. So it seems like proxies go through the same screening process as any other patient in the portal and then the linking can be done by the patient, if the patient's confident, or it can be done by the processes of the institution if the patient's not confident.

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

Yup.

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

I agree with that, this is Leslie.

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

Yup.

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

This is David Kotz, I agree with that as well. It reduces the problem to that last step really, which is how do you handle the proxy relationship creation when it's initiated by the proxy.

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

Yup – issue.

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

Yeah.

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

Security is always –

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

It's policy.

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

– right, security is always about risk and risk management, that's really what it boils down to and sometimes the solution is a balance between barriers and accountability. So if the bar – you don't want the barriers to be too high, so you keep them low so that most of the time people can get the job done. But then you hold people accountable if they somehow do the wrong thing, meaning, if the proxy was not the legitimate person who they claimed to be or did not have the right to become a proxy, then at least you know who they are and you can get them later.

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

Right.

Leslie Francis, JD, PhD – University of Utah College of Law – National Committee on Vital and Health Statistics

So – this is Leslie Francis. This is something well worth thinking about which is that if somebody's in the hospital at the bedside and says, I'm the personal representative, let me see the record and they see the paper record, yes they've seen the record. But if they download it, then they have a copy of it, which they can retransmit, so it is a little bit scarier. Now a hospital isn't going to just let you even see the paper record just on your say so, they're going to want to have – they're going to know that they need to check to make sure that you're the son and that under state law as the son you have that kind of authority or whatever. They might check advance directives; they do that all the time. I think at a minimum they have to do that, but of course, we can't say – we simply have to say, do whatever they would do under local rules, because those are going to vary.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

Can I suggest that yeah, I think it sort of comes down to this idea of local availability versus global availability and that's what makes everybody so concerned about electronic records is that literally anybody anywhere in the world can, in theory, access a record. Whereas if you want to get a paper record, you've got to go to the Medical Records Department, you've got to show your face and somebody has an opportunity to stare you down. So, it does prevent people from making that request who otherwise aren't entitled. To Leslie's point, it's a single copy, which is much more difficult to – there's – it's less potentially impactful of any inappropriate use when paper, or at least that's the thought.

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

Yeah. Well, and it's potentially ongoing, right, as more information gets populated in the portal, you have that – you have those credentials, you can keep accessing it as opposed to having to represent yourself to the Medical Records Department over and over again.

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

So this is Judy, am I getting this straight? If my daughter, when she was in the Peace Corps in Africa, wanted me to be proxy, she had wanted to be – I wanted her to be proxy for me or she wanted it, either direction.

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

Right.

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

One of us had to fly from the US to Africa to be the proxy.

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

I don't think that's what we're saying, Judy.

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

Okay, can you explain then.

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

No, no, no, no, I don't think that's what we're saying.

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

Oh, okay.

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

I think we're talking about the same – a similar set – we're talking about on the one hand, in order to demonstrate that either one of you was legally authorized to access the account, it is always easier when the patient herself makes the request to proxy somebody else. So if your daughter's saying, I want to proxy my mother, that's much easier and we've already established some recommended best practices for iden – then further identity proofing you to set up an account remotely, if you can't be there in person. So we're not saying that this all has to be done in a face-to-face transaction.

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

Okay, then –

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

It's a little more complicated when let's say the reason for that – that you're requesting the records of your daughter is because there's an issue in capacity. And there isn't any way to confirm with your daughter that in fact, she wants the access to that account, then the institution has to think through, let's assume it's HIPAA covered under the friends and family provisions, do we think it would be in the best interest of the patient? Because there is permission to grant that kind of access.

And I think the only point that Leslie and John are making is that this wasn't necessarily a really hard decision when you were talking about one time access, it's potentially a harder decision when you're talking about credentialed access to something that is much more long term in nature and also includes the downloadable aspect of it. But that doesn't change the equation that in the most basic of ordinary use cases, we want people to be able to grant access to whomever they want to, to these accounts.

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

So then go back and explain the, I'm at home, I'm running out, I need my husband to get a med for me, how do I grant him proxy access? Does he have to go in or not in this scenario?

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

No, I mean I think we've identified a number of ways that you could do this, including the ability for you to go into your own portal account and grant him access. We've recommended that there be a confirmation sent to you, just to be sure, but he could be granted that access.

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

Okay.

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

Am I missing something?

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

And – but –

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

– without showing up here?

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

Without showing up, that's right.

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

This is David. My point Judy was that his account should not be created with any less author – any less certainty, I'll just be generic, than any other account to that portal. So that when he –

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

What does that mean in your institu – how does that work?

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

Well, I'm just saying, whatever the policy is for granting – creating accounts at the portal, that policy should be rigorous, regardless of whether the account is going to be used by somebody proxying or whether it is the patient themselves.

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

So if in your organization, you have to see the patient in person to grant the patient the original account, then you're saying that you have to see the proxy, too, to grant that patient the proxy account, even though the patient is saying, I would like this to be done.

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

I think you need a policy in place to assure with the same certainty, whether that requires in person or not is a local decision. It could be done with a third party, it could be done with the phone, but it – I what guess I'm arguing is to avoid the creation of dual-class accounts, direct patient accounts and proxy only accounts. Because if you can easily cheat on the proxy only, because the rules are less complicated, you could trick people into granting you proxy access and you created a security hole. It seems to me –

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

But David –

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

– that they ought to be equitable.

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

But they are a second dual – they are a proxy only access account, they're a different account with different rights to it.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

That's what I was going to say, it's not that complex to do that, to say, okay here's a proxy account so they have access to only the records that they've been authorized access, but they don't have access to all the rest of my portal. That's not that – technically that's not hard to do.

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

So let's –

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

Right and so I think there's a difference, I mean that's where we're going, between saying it's a total new account to that patient's – total new access to that patient's account, as if you had two patients on one, versus it's a separate proxy account that looks and acts differently.

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

Yeah, I mean my perspectives and – this is David again. I'm thinking out loud here, so I can be talked off this ledge, but it's a login and you're going to create dual-class citizenships around logins and login certainty, and that doesn't seem right to me.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Well that's not – no, they're two different things there, David. There are – the login is to authenticate the individual, then at the next step is the authorization of that individual. Every portal works that way, every application works that way. The next step where the authorization, you wouldn't authorize them complete access to the portal, you would authorize them the proxy access.

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

Well –

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

Right, but you're authorizing what you think is a known person and if you've created an easy way to get an account, you're going to be creating authorizations to imposters.

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

I don't think – so, if I can interrupt for a second. I think that this conversation is truncating two different issues, which I think Dixie was starting –

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

Exactly.

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

– but then it strayed into discussions about what's the level of access, which is really sort of related to the granularity issue, which we haven't gotten to yet.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Yes.

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

There's the proving that you have the legal authority to access the information, for which if the patient is asking for you to be given access, I think we had already established early on in our call that that should be enough, right. And then –

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

Right, I'm – right.

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

– to an are you who you say you are, for which the proofing and getting you the account and the level of authentication, I think David's making the point, we've already established thresholds for when patients do this, we shouldn't make it any different on the identity proofing and authentication issue, for the proxies.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

For a full-blown access. But if all they're able to do is to access the –

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

Okay.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

– then they've had restricted, they've been authorized restricted access, not complete access to the portal.

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

Yeah, I wouldn't tie those two together.

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

I agree, I would – I agree with David. Yeah.

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

I agree with that, too. And I think though that there's a big difference between I'm the patient saying I want to grant my husband access or I'm my husband coming up and saying, I want access. Those are two very different things.

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

Yes, yes, which we – talked about.

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

Right and I think we agree – we all are comfortable with that. The question is, how does your husband prove it's his account, and I'm saying it ought to be the same way, in terms of proofing, issuing the login credentials for any account on the portal. All accounts on the portal should be vetted to the same degree of level of assuredness, whatever the local policy is and that then the proxying is an independent set of circumstances governed by the policy. But at least you know who the account owner is and who the person is that's going to be able to log in to that account, because you've followed common, robust, level of authentication – level of assurance, whatever that local policy is.

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

Here's the part I don't understand. If I'm the patient and I say I want my husband to have access, and then I put in a password – a user name and a password for my husband, and I tell him, this is it. Then I have basically said, this is it and why do you need to have him show up, because I have managed that myself as the patient.

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

Hmm.

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

Is he logging in as you or is he logging in as himself?

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

As himself. I have –

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

So how does he get an account on the system, you have as a patient created an account for him?

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

Yes, exactly.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

And that's – I hate to tell you, at least in EPIC I thought proxy access required a separate account.

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

Yeah, that creates a separate access for him.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Does that person then on EPIC have access to the full portal? Is that an equal account as the original account, in other words, equally authorized?

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

Yes, he has a view into the account that I have authorized for him by saying I want him to do it and putting in the information that allows you to identify him.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

Right, but my point is that though you're actually creating a separate account that you're linking to your account.

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

That's what it sounds like.

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

It's a separate –

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

That's what it sounds like.

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

– account.

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

But she's done the credentialing herself in the portal.

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

Right. And share those credentials directly through whatever channel she wants with her husband, who may not be physically present, but maybe she trusts a phone call.

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

Right.

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

And so that is certainly simpler, the problems with that, which may be totally acceptable is if the husband also happens to be a patient, now he's got two accounts to mess with –

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

Right.

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

– and if he happens to be proxying other members of the family, he's got more than one account. So we now have created multiple accounts, each of which are belonging to the same, essentially unverified individual with different roles and responsibilities and it just seems to me to be a less orthogonal approach. But, I'm not going to fight about it, I'm just thinking out loud that an account ought to be an account.

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

I hear you David – this is David Kotz. I think the challenge – the alternative is that if you go through the same process to create a new account for a proxy who is not already a user – a known user, that process in most places, I assume, involves physical presence, which for many proxies would be untenable, at least on a short-term basis. And so Judy's solution has the nice property that at least for the cognizant patient, it's very quick and very easy to create an account for a non-present proxy. But it does mean you end up with two different kinds of accounts and for some people, you might end up with multiple accounts.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Well Judy, if this person who's being authorized already has an account, do you create a new account or do you just authorize that account?

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

Authorize that account.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Hmm – so they don't have multiple, if they have – there are two instances there.

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

(Indiscernible)

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

Yeah, it's two levels of accounts in one way or the other.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Yeah, one's a proxy and one's just authorizing another normal account, yeah.

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

Wow, that's an interesting option.

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

This is Micky, I think the one – I know there's – go ahead David.

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

I –

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

Sorry, I don't recognize voices and we had a couple of people talking at once. Was that Larry?

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

No, this was Micky, but I think I cut David off. David, go ahead.

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

No Micky, I've talked too much, you go ahead.

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

The only thing I was going to say is, there are lots of sort of complex interactions and consequences, either unintended or not that could happen as we're thinking through this. But it seems like the principle that you're stating, David, where that it should be simi – the same rules ignores the fact that in the proxy case we have one piece of valuable information that we're essentially ignoring, which is that the primary record holder has given information to us about a proxy. And by holding the proxy sort of identity proofing to the same level, we're completely ignoring that new information that we've been given.

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

Yeah, and I think that's – to me that is the logic that applies to the granting of the actual proxy right, the patient is granting that right. And I'm just suggesting that that's a different question from certainty that the person logging in claiming to be the recipient of that right is who they say they are. And I'm not sure that a patient delivering an out-of-band password is sufficient for that. It may be, I think it needs just more thought and security probing by the people that think about these things all day long.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

But you could easily ask the patient to provide more, I mentioned the address, the name, address and the email address, right. But you could ask them for other things, too, that would make it easier for you to just kind of fork this other proxy account off of the patient, without requiring that that person go through all of the ID proofing.

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

Yeah, although they're going to have access to PHI and doesn't that require some identity proofing? They're going to come in over the web in a café from somewhere and get access to PHI.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

That person's PHI, but that person will have identity proofed them basically by providing this other information on them.

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

Yeah, you're putting a lot of burden on the patient now to essentially manage the identity proofing, which is certainly a good place to start.

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

Well David, sometimes I do get confused as to who my husband is, but –

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

But most days it works just fine. So what I'm going to suggest is we're – Micky and I will work with the MITRE staff to draw – to try to organize where we think we've landed on some of these issues, that will enable us to sit with this for a little bit and think through more about some of the issues that we've talked about. Particularly how much do we want to rely on patients or should we rely on patients both with respect to the authorization aspects of this as well as the identity and authentication and under what circumstances. I think Judy posed a very interesting example of being able to essentially assign an account as a patient, while you're in your portal, which – or assign access to somebody who already has an account in the system, which is an interesting aspect to this. So –

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

Deven?

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

Yes.

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

This is David. Before you take us away from the subject, I want to make one other suggestion –

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

Sure.

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

– which is, just that we – it may be the case that in-person proofing for the creation of an account is not the only way that an account can be created. It just has to be created with some degree of certainty that it's the right person. So for the hopefully relatively unusual use case where the person is in another continent, there may be ways to proof the creation of that account that don't require that it be in person. But when it's all said and done, you have some higher level of assurance of the identity of the person that's attached to that account, who can then be proxied, as they need.

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

Well, right.

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

We haven't made an ironclad requirement for in-person proofing for portal accounts, we just listed that as one choice.

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

Right.

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

Yeah and I think it's an extreme example one continent to another, I happen to be in Wisconsin and most of my family is in Seattle, I'd hate to have them fly over here to get it –

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

Those are two different continents aren't they.

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

Yeah, just about. But the thing is that we don't know the personal situation of people and for whom it might be really difficult and for whom it might be easier.

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

Right.

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

Right. So they can dial Seattle and create the account over the phone and be confident they know who it is – that's – my only point is that an account should be proofed fairly thoroughly.

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

Yeah, well keeping in mind that we've never limited the ID proofing piece just to in-person.

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

Right.

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

But are there circumstances now with proxy accounts where we can actually rely a little bit more on the patient to do part of this work. I think the open question we'll continue to discuss on our next call. The other issue that we didn't quite get to today, but that we'll take up on our next call is the issue of the granularity of access. And what do proxies have access to and to what extent can we give people choices about what a proxy would be able to access, which might be particularly important in a personal representative situation. Because some – as Leslie was pointing out, under state law sometimes they are not permitted to access the whole record, as they would be under HIPAA. But, this bumps –

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

Deven?

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

– right up against issues that we've talked about previously around data segmentation and so we'll have to keep that in mind as we think about what, if anything, we can say about this issue. But we don't have really time to start diving into that this time around and we'll pick it up next time.

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

Deven?

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

Micky, do you want to add anything because I think we're going to – we're coming close to our public comment.

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

Yeah, one thing I would suggest diving that in addition to granularity of access, I would suggest that we also add granularity of function.

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

Ohh.

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

Because – right, because as a proxy, and I know I'm going through this personal experience as a caregiver for a parent, I may be just as interested in being able to have access to scheduling and access to communicating with my parent's provider as I do to access to the complete record.

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

Right. That is correct.

Dixie Baker, MS, PhD – Senior Partner – Martin, Blanck and Associates

Yeah, that's a good point.

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

Very good point, thank you, we'll add that to the list. So we actually – our ne – just as a reminder, before we move to public comment, is that we – our next Tiger Team call is on a Wednesday, February 19 at 2 p.m. Eastern Time, and the reason for the truncated schedule is so that we didn't try to have a call during HIMSS, which is the last week in February.

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

Appreciate that, thank you.

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

No problem, Judy, we were not going to – every year we forget, every year we have to scramble to figure out how we're going to reschedule a meeting, and this year, finally, we figured it out. Okay, with that Michelle, do you want to take us to public comment?

Public Comment

Michelle Consolazio – Federal Advisory Committee Act 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 a public comment. John, please go ahead.

John Mattison, MD – Chief Medical Information Officer – Kaiser Permanente

Yeah, hi, this is John Mattison, Kaiser Permanente. And in the preceding discussion, it seems as though we arrived at the level of identity proofing for anyone assigned by the patient to receive VDT access should have at least the same level of identity proofing. My question to the group is, given how many commercial interests have actively and openly sought access to these kinds of data for monetization purposes, is an equal level of identity proofing to the assignor of the authorization really sufficient? And is that a concern of members of the committee or is that not felt to be a risk of this process?

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

So John, usually these are just provide comments and we take them under consideration, but I will ask you a question.

John Mattison, MD – Chief Medical Information Officer – Kaiser Permanente

Okay.

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

Are you thinking about patient-granted access?

John Mattison, MD – Chief Medical Information Officer – Kaiser Permanente

Yes.

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

Okay, we'll take that under consideration. Thank you.

Ashley Griffin – Management Assistant – Altarum Institute

Our next public comment is from Daniel.

Daniel Esquibel – Privacy Officer - Children's Hospital, Colorado

Hello, can you hear me? Hello?

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

Yes, go ahead.

Daniel Esquibel – Privacy Officer – Children's Hospital, Colorado

Okay, this is Daniel Esquibel. I'm the Privacy Officer in the Information Security Department at Children's Hospital, Colorado. And the comment I would like to make is, one, when you talk about treating adults and pediatric patients differently, one thing to note in the pediatric world is that we often have minors that are emancipated or often in state law can consent for treatment, thereby making them in a sense adults. And we have to deal with those adult issues, so we are already dealing with all those adult issues when we set up in our sense, our MyChart, because we have to deal with the pediatric world in one sense and the adult world, at the same time, because of consent issues for treatment. And going with that with the personal representative or guardian is also the question of keeping track of legal documents of who has auth – who is authorized to view what, when or when that changes because of changes in custody either between parents or the state. And that's also true of adult populations, especially in the mental health context.

And the biggest problem, or, one of the things that would be helpful really delineating what is what I call administratively allowed, legally allowed and what is technically feasible. As noted in the comments and in many other parts and the comment from another Children's Hospital, the biggest problem with adjusting in MyChart levels of use and access is segmentation of information. Because again, a pediatric patient on one side might be an adult for this type of treatment, but still be a child with personal representative on this side of the divide and how do we segment those different types of information? Right now technically segmentation isn't there to really allow what we would like.

And then one thing you didn't describe is – along with this is, what happens when in the case of divorce, you don't want that person to access anymore, how do you de-link those accounts, and again verify that or kill it, kill the account. So that's just some – and with all of this is, I see sometimes as remembering what are reasonable safeguards because, especially in our world, we don't want them to obstruct the provision of healthcare. That's it. Thank you.

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

Thank you.

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

Thank you Daniel. There are a number of other commenters and I just want to remind all the commenters that your time is limited to 3 minutes.

Ashley Griffin – Management Assistant – Altarum Institute

Our next public comment comes from Adrian.

Adrian Gropper, MD – Chief Technology Officer - Patient Privacy Rights

Hi, this is Adrian Gropper with Patient Privacy Rights. I'd like to mention that whatever identity proofing ends up being done needs to be accessible to the individual physician than just to the institution. Because we don't want to limit the physician's ability to serve their relationship with the patient and the family.

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

Thank you.

Ashley Griffin – Management Assistant – Altarum Institute

Our next public comment comes from Catherine.

Catherine Schulten – Senior Product Manager - QuadraMed

Hi, can you hear me?

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

Yup.

Catherine Schulten – Senior Product Manager - QuadraMed

Hi, great. Interesting conversation, I really appreciated this. I'm from QuadraMed, I'm a product manager for our Enterprise Master Person Index Solution. I was very interested in the discussion you had about the focus on proofing the proxy and the identity of the proxy and also, obviously proofing the identity of the initial user themselves. But I'm concerned that maybe there isn't enough focus yet on the reality of the situation that not much is really done to proof the patient at the point of service or as they come into the facility. Most of us do come in fully aware, with driver's license and IDs and we provide all that information willingly and we want to be accurately identified.

But there is a percentage of people who do show up for care who are willingly choosing not to provide accurate identification, so medical identity theft or for other reasons, purposefully choosing not to provide accurate information. Or they might mistakenly provide information, just not very accurate or detailed. And then there's the situation of the hospital who might inadvertently or mistakenly overlay records. So while there's – I heard a lot of discussion about really getting – proofing this person and making sure they're the right person on the portal, but even at a very foundational level, there is a percentage of patients in these systems who are not even proofed. Even though they are showing up to the hospital or the doctor's office, that isn't really being accurately achieved, so, just putting that out there.

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

Thank you.

Ashley Griffin – Management Assistant – Altarum Institute

Our next comment comes from Kim.

Kimberly Reich – Healthcare Privacy, Compliance and EDiscovery – Lake County Physicians Association

Hi yes, thank you. My name is Kim Reich, I'm with Lake County Physicians Association. And I want to go back to what some gentleman talked about from Colorado, some of the legal requirements. My issues go back to the March 26th Federal Register regarding some of the administration – requirements and some of the new things regarding the discovery and some of the new whistleblower protections under HIPAA. We have to remember that there need to be safeguards also regarding the tagging that the evidence of the – that these – when these people access the records, we need to have measures to know who accessed the record when. That we – when we provide these identities, we need to keep tags, so there needs to be metadata or ways to track who accessed the record and when. So, thanks.

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

Thank you.

Ashley Griffin – Management Assistant – Altarum Institute

We have no further public comments at this time.

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

All right, wow, we have a lot of public interest in this issue, that's terrific. Thanks to everyone for the feedback. Thanks to the Tiger Team members for being on the call and we will all be together again on this one soon. Stay tuned. Thank you.

John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics

Thank you.

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

Thanks.

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

Bye bye.

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

Thanks Deven.

Public Comment Received

1. Do you have a list of functional and no-functional requirements? A flow chart would be helpful here.
2. Thanks! State level laws may differ in disclosing patient information; how about creating a model based on Federal law as 'core' information to be shared and let States either restrict or add based on their regulation. That way, responsibility is reasonable shared.
3. Slide #8 - just email address and/or postal address should not be enough to verify identity (refer to recent fraud detection projects in Medicare/Medicaid); adopting more stringent policy to set up account and then subsequent access could be protocol driven with security question. I like the idea of granting access by patient to user id - what's the fall-back option simply against a typo? I'm hearing so many underlying assumptions that should be explicitly noted and vetted.
4. Another idea is to add a flag to patient record, if there is any suspected activity in terms of access (similar to banking) to raise the level of alert and scrutiny, while keeping it simple by default. This is a critical point to differentiate between creating a separate proxy account versus giving patient's original account like financial vendors do.
5. In Epic only one MyChart/ Portal account is created which can be linked via proxy to another's' patient record in Epic. A new account is not created for the proxy, so numerous accounts are not created.
6. From our perspective, in order to complete our due diligence when granting proxy access to PHI, we must have a signed auth form from the patient/ proxy. If the patient is a minor (between ages 0-12) or adult (18+) that cannot sign the auth form, the proxy must supply our HIM departments with valid documentation supporting that they may access the patient record.
7. I caution overcomplicating patient initiated proxy access as it will be contrary to empowering patients in control over their health information. Our portal (vendor application) enables the patient to grant proxy access, with controls over how much information to proxy and how long to grant it. This generates an email to the address provided by the patient with a registration code (which will expire) to create an account. There is no way for the hospital to step in and validate the identity of the proxy, and to do so eliminates the self-service (patient empowering) capabilities. It seems to me that with proper consent built into the process (educating patient on security considerations), we should defer responsibility to the patient. Without this the utility of our portal is limited and we would be challenged to comply with the Meaningful Use objective.
8. One last comment: You can establish accounts and provide access at check-in if the other family member while the family member is present.