# HIT Policy Committee
# Privacy & Security Tiger Team
# Transcript
# May 22, 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**
Thanks 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, this meeting is being transcribed and recorded so please state your name before speaking. I'll now take roll. Deven McGraw? 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. Andrea Wilson? David Kotz? David McCallie?

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

**Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator for Health Information Technology**
Hi, David. Dixie Baker? 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. Kitt Winter?

**Kitt Winter – Director, Health IT Program Office – Social Security Administration**
Here.

**Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator for Health Information Technology**
Hi, Kitt. 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**
Hi, Larry. Leslie Francis? Linda Sanches?

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
Here.

**Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator for Health Information Technology**
Is Leslie here? Stephanie Griffin?

**Stephania Griffin, RHIA, CIPP, CIPP/G – Director, Information Access & Privacy Office – Veterans Health Administration**
I'm here.

**Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator for Health Information Technology**
Hi, Stephanie. Wes Rishel? And from ONC we have Joy Pritts and Kathryn Marchesini and Laura Rosa. And is there anyone from OCR on the line?

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
Linda Sanches.

**Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator for Health Information Technology**
I'm sorry, yes. Sorry, Linda.

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
It's okay.

**David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College**
Michelle, this is David Kotz, I'm back, I pushed the wrong button when you called me.

**Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator for Health Information Technology**
Okay. Thank you, David and with that, we'll turn it back you Micky.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Okay, great. Thanks, Michelle. So welcome everyone, thanks for joining the call this afternoon. Deven McGraw is not going to be able to make it today, so I'll be covering for her. I am – just so everyone knows, I am not an attorney, so I am familiar with the material, but will be relying heavily on OCR, ONC, MITRE and the Tiger Team members if we get caught into specific questions about the law. But, as you'll see, we're going to go over sort of foundational – sort of the level setting part of this discussion of minors in particular. And I think, as you all know, we've done a bunch of work recently on data segmentation, on other issues that we have ex – specifically excluded any consideration of the minors question as it regards any of those issues, knowing that we were going to deal with minors separately. And there are only so many issues that we could tackle before we actually had to get to the minors issue, so here we are.

So today's meeting is really just to orient us. It's to lay down the foundation of sort of the legal statutory base that we're going to be drawing from here and trying to think about how that affects health information technology issues as related to information exchange, VDT and other issues related to electronic health records and health information exchange. So the first part is just going through the corpus of work that the MITRE team has been terrific at putting together for us in synthesized form to make sure that we all have a good level set of what does the law say today. And as you'll see, there's a lot of complexity there, as I think all of you know, but I'm really struck by how much more complex it is even – as you start to read through that.

And then we'll talk a little bit about sort of just some framing perspectives at the end, where we want to set us up a little bit to think about how should we be framing the next set of meetings that we have to discu – in discussing the minor's issue. And somewhat open-ended but really want to be able to make sure that everyone has the same foundation and then get a little bit of input on course guidance from all of you as we think about how we're going to address the topics here. Makes sense to everyone.

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

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

**David McCallie, Jr., MD – Senior Vice President, Medical Informatics – Cerner Corporation**
David McCallie with a question. I read through the material and got increasingly the feeling of being underwater with all of the complexity there. And then I got to the questions that we were going to considerably – or conceivably think about at the end, and it actually helped to know what those questions were so that when you're reading through the material, you can kind of focus on the parts that might or might not be more relevant. So is it possible to answer the question broadly, of what we're being asked to produce? And what problem are we trying to solve before we dive into the details of the law?

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Yeah, I think that's a great suggestion, David. I wonder if – let me see here – yeah, no, I think that makes a lot of sense. We can even jump to that slide and then work our way backward if that makes sense to you.

**David McCallie, Jr., MD – Senior Vice President, Medical Informatics – Cerner Corporation**
Yeah, that was kind of what I was thinking at a minimum, we could at least –

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Okay. I think that's a great idea. So if we could jump to slide 12. Okay, great. So this is the high-level framing that we laid out, really as a way of just starting to think about, so what's – as a practical matter, where do we think the material issues might be as we take into – as we look at all of the related issues related to consent and information sharing with respect to minors. And sort of the portfolio that we have, which is health information technology and policy related to it. So, first off, the focus is on children and teens under 18 years old. So as I said, we've dealt with adults on a wide variety of other things related to Title 42 and other things previously, over the last few months.

And so we're not going to talk about adults at all, now we're focusing on children under 18 years old and the possible use cases where we think that these issues may come to the fore are first off, access to PHI through the Stage 2 view download transmit capability. So, what in particular do we mean there? There are a couple of issues, and we'll talk about this when we go back through the deck, but to the extent that minors have – there are certain types of information that minors have the ability to consent for without patient consent or even patient knowledge of that information, for example.

What does that then mean from – with respect to personal health records or patient portals? And what types of access needs to be built into both policies as well as technology to be able to allow those portals to operate in a way that is going to be sensitive to the different types of information sharing layers that apply to minors. And as you'll see, there's a lot of variation across states and with respect to what ages this kicks in, what types of information it is, and there's not even consistency in states with respect to what things can get triggered at which ages. So there's a lot of complexity there. So that's just a flavor of what we will, I think, have to address there.

The other issue that is possi – a possibility that we could encounter again as we start to dig deep into this is, are there redisclosure issues that could come up resulting from provider-to-provider health information exchange. So the first case was dealing with patient access to essentially the information that's in an EMR as instantiated in a patient portal or however – whatever technology is used to provide to that patient that view, download, transmit capability. The second is related to, if there are certain protections that a minor patient has that get expressed at one provider – at one provider's office.

So again, thinking about the complexity of a parent who has access to a patient portal by – of their being the personal representative – the authorized personal representative of the minor. And let's say the minor has expressed certain preferences with regard to not wanting to share certain types of information with the parent, and those are enforced even let's say at the first practice, with respect to what's available in the patient portal. Well now information is sent to another provider via transition of care or something, what happens with respect to access to that information at that provider's officer?

And that office may – will probably not have any idea of any consent preferences that the minor has made at the first office. And could grant a parent full access to a patient portal on that side without the minor's having had the opportunity to express any sort of constraints that they would like to have placed on the access to the parent. It may very well be that we decide well, that's really got to be the minor – it's got to be done provider by provider, but we just put that as a flag for the kinds of issues that we may need to sort of discuss and see whether there are further issues for discussion or even policy there.

And then there are the possibility that this could touch on other regulations, which we don't normally touch on, but Title X, which deals with federally funded family planning services that have a special set of protections that could get touched upon by this consideration of minors and health IT, as well as FERPA. FERPA, as I quickly learned in the last day, is related to educational – education information, so school records and such. And there are certain protections related to the release of information that's in school records and the idea would be that to the extent that there is information that could be in school records related to school nurses and the like, they could touch in those areas as well.

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

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
So there could be others, yes, go ahead.

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
Well, I'm sorry; you finish your thought there.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
No, no, no, I was just going to say there could be others and I was going to ask all of you if there are others that we haven't thought of.

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
Well, so one of the – this is Larry. So one of the others is in dealing with the divorced parents, I mean you sort of touched close to that where one parent may have the right to the records and the other may not and that needs to be reflected both in the parent – the record as well as any place that it gets sent. But –

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

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
– but I wanted to, I wanted to just check on one thing. So will we not be talking about emancipated minors, the pregnant teenager who, for all intents and purposes, we treat them as an adult and patients don't have access to their records at that point. I mean is that –

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
We – yeah, no, no we will. I think that's absolutely in scope and is one of the more complex areas.

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

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Why did you think we wouldn't be talking about emancipated minors?

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
Well because we could then just say, call them adults and then we treat them like adults and then we don't even have to think about the issues of other people having rights to their records. So I wasn't sure if you were making that division.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Right. No, I think – yeah, and again, just to be clear. I mean I think that we do – it seems to me that we do have to deal with it with respect to how does that – it's true that they are treated as adults, but then how does that get reflected in policy and technology enablement, to make sure that that happens that way?

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
This is John Houston; I think there are two pieces of the puzzle though, too. There's this one, yeah, you can treat them as adults once the determination of emancipation has occurred, but what are the triggering events for emancipation? And they can get quite tricky based upon state law. So I think that the whole idea of how do you assess the triggering event is probably as – and that's the difficult part of all of this. And so I think here is a lot of work to be done on policy with respect to triggering emancipation. That's one thought and by the way, the other thought I had, which is on another topic, relates to other things we need to worry about. And it does fall in line with the parent and divorces and things of that sort is as also relates to adoption and what rights would certain groups – or not just adoption, but probably even more so, when you have a child that is in some type of non-permanent status such as they're in a foster home –

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Foster, right.

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
What are the rights of the foster family versus the courts? And so we – there's a whole class of issues around that as well.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Yup. Great points. You had to make it more complex, huh.

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
Let me just say this, Micky, I deal with this all the time, so I deal with this complexity.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Oh, great. Well you'll be very valuable here. So why don't we go all the way back to the beginning now, if we could flip back to slide 1 or 2. Okay. So, so I guess first we were just going to do debrief on the Policy Committee meeting that we had with the recommendations on DS4P.

So I want to thank all of you for the tremendous work there. The Policy Committee unanimously, I think as I recall, there might have been one abstention, I forget, I think there was maybe one abstention, supported our recommendations on the data segmentation issue. So I think that was – I think it was perfect, I think it was a great conversation. Want to thank David McCallie in particular for helping us seed that framework that everyone contributed to afterward, but I think it was a tremendous starting point and it was very well received by the Policy Committee. I don't know if there was anyone else on the phone who was at the Policy Committee who wants to comment any further on that, or Joy, if you have any other thoughts.

**Joy Pritts, JD – Chief Privacy Officer – Office of the National Coordinator for Health Information Technology – Health & Human Services**
No, I think that we ended up in a very good place and I know that the – I've seen some articles in the trade press that make it seem like, oh, this has been put off indefinitely, but it was a very thoughtful approach and shows a path forward and we were very satisfied with the recommendations.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Great. Okay, great. Well, unless there are any other questions or comments on that, why don't we move ahead on the issue of minors? So we'll go through some background material and some of it's fairly heavy, but I think MITREs done a great job at synthesizing it as well as one possibly could, in a way that'll allow us to make sure that everyone's got a good level set. And we'll obviously have to refer back to it at various points, but I think it's good to get this level set. So why don't we dive in here. Next slide, please.

So the first topic is how are minors and personal representatives dealt with under the Privacy Rule? And with respect to general treatment, I think, as all of you know a parent, guardian or other person is the personal representative of the minor child. So we talked about personal representatives and family and friends access before, in a previous set of discussions. So in this context, in the HIPAA context, a parent is a personal representative and therefore a healthcare provider is permitted to share patient information under the privacy rule. But there are some exceptions that we're going to talk about in a second. But just generally, this is sort of the status and the way that HIPAA treats parent access to a child's record. Next slide, please.

So there are exceptions. The first is when state or other law does not require the consent of a parent or other person before a minor can obtain particular health services, and the minor consents to those healthcare services. So there are a wide variety of those, we'll discuss some of the details of that in a second, but – and I'm sure John and Larry, being on the frontlines there, could describe to us every possibility under the sun where that applies. But it certainly applies in anything related to sexually transmitted diseases; birth control starts to come into play, other types of services that are in that category. Substance abuse has its own set of things, as we'll discuss, with respect to Title 42 and other things. So there are a wide variety of cases there, again, that varies by state, but anything where state law or other law specifically gives the minor the ability to consent to treatment. And sometimes expressly or by implication the minor has control over the way the information is handled related to that treatment as well, as a part of that protection.

The other exception would be when a court determines or the law authorizes someone other than the parent to make treatment decisions. So in that particular case, the parent is not treated as a personal representative anymore. And then the third would be when a parent agrees to essentially sort of step back from it, so the parent, in this case, is the trigger for allowing the confidential relationship between the minor and the healthcare provider and I guess in effect, pulling themselves back from the status of being a personal representative. Next slide, please.

So here's the – here's that case when a minor obtains healthcare services under any of these exceptions, the minor generally, in italics, and we may have to go through this with a little bit more expertise, has the authority to control the health information related to such services. So that's what I was getting at before is that there is the question of whether the minor has the independent ability to – and exclusive ability to give consent to the treatment and then what goes along with that is, did they also have the ability to control the information that is shared as a result of that treatment decision. So it doesn't mean that the minor has total control. And in this example that's given, a covered entity is permitted to disclose to a parent or provide the patient with access to a minor child PHI to the extent that it's expressly permitted or required by the state or other laws, regardless of whether the parent is a personal rep. So there is a lot of gray, it seems, in this area and I'm sure there are many, many specific examples of how there are particular circumstances in which a patient – a minor patient has given consent under some sort of protect – under some sort of protection for a treatment, but the information is still shareable.

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
And of course –

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
– yeah, go ahead.

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
Yeah and of course – this is Larry, of course it gets more complicated as you also think about the health plan and whether the parents who are the guarantors, what they have access to through the health plan.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
That's a good point and I don't think that was on our list, so I'm going to put that on our list.

**Gayle Harrell, MA – Florida State Representative – Florida State Legislator**
This is Gayle Harrell, I just joined the call late, but I did want to make a comment about state law and I think there was some reference to that. But each state has its own particular set of requirements as to what minors can receive – what kinds of treatment minors can receive without consent or knowledge of their parents. Specifically sexually transmitted diseases, in some states abortion, in some states just birth control pills or any kind of examination related to – internal examinations or whatever regarding female organs and things so it varies state to state and this becomes very problematic.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Yup, absolutely. And actually there is a summary slide a little bit later that we'll get to in a few slides that tries to capture some of the dimensions of that variation across states, without trying to inventory every single – what every single state does. But I think that's a great point, Gayle, that we're going to be coming back to over and over again, I think, in this discussion.

**Gayle Harrell, MA – Florida State Representative – Florida State Legislator**
There are also like specific requirements, not just on sexually transmitted diseases, but also you get into the same kinds of things in issues – other issues, mental health issues as well, which of course we've had major discussion on mental health issues. But there are also certain types of counseling that a minor can get that a parent is not necessarily required to be informed about.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Right. So, we'll have to be, and I suspect that as we go into some of these issues, we may – we'll have to be adding to the list of things that we may not have captured in the first pass, so things that have –

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

**Gayle Harrell, MA – Florida State Representative – Florida State Legislator**
Yeah.

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

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
I think we lost Micky.

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

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

**Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator for Health Information Technology**
I think we lost him, so we'll just wait a minute for him to join back in. This happened on the last call today so there must be a theme.

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
I think it got so complicated his mind exploded.

**Gayle Harrell, MA – Florida State Representative – Florida State Legislator**
Poor Micky.

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
I hope not because –

**Gayle Harrell, MA – Florida State Representative – Florida State Legislator**
(Indiscernible)

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
– it's going to get a heck of a lot more complicated than that.

**Gayle Harrell, MA – Florida State Representative – Florida State Legislator**
It's all the discussion about sexually transmitted diseases.

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

**David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College**
Unfortunately we all carry location-tracking devices, so we should be able to find Micky pretty easily, right? No privacy issues, there.

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
Will you please give me the n-code for mind exploding due to complicated –

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Hi, it's Micky. Sorry, I don't know what happened.

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

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
We were just laughing about you, just so you know that. You were the brunt of a bunch of our jokes, so –

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
I figure I'll be looking back at the transcript, remember, this is all recorded. I assume you all thought that I just fled.

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
No, we thought your mind – your head exploded.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Okay. Next slide, please. Yeah, it was the additional issue that Gayle added, that was the straw that broke the camel's back. So there is discretion to covered entities regarding minors, and obviously the system could not work unless there was a certain amount of discretion that was allowed to providers, because it's so complex and there are so many gray circumstances. So in cases where – in which state or other applicable law is silent concerning disclosures to a parent, and the parent is not the personal representative of the minor child based on one of those exceptions that we were just talking about. A covered entity does have the discretion to provide or deny a parent access to the minor's health information. Again, this is where we're coming into one of those gray area circumstances, but certain discretion is allowed to providers, which they exercise all the time, I think, because there are so many specifics and so many gray areas.

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

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Yup, go ahead John.

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
I think though that, we've always at least, from a practical perspective said that if a minor has the independent right to seek treatment without parental consent, that there is a corresponding right of privacy there. And I'm not sure how that – unless a state law is exp – allo – provides for the parent to have notice or access. I don't know how that squares with what you just said, though.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
I mean, my immediate reaction would be that your exercising your discretion to say, we have a – we try to draw as clear a line as possible to say that as long as – that the information sharing sort of is aligned with the rules pertaining to their having independent authority over treatment decisions. Whereas – but I don't think that's – if I'm reading this right, that's not necessarily required that as long as it's a licensed healthcare professional and they exercise a professional judgment making these decisions, that they could, on a case-by-case basis, come up with a different decision with respect to parental access.

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
I – but – I would be interested in trying to understand other thoughts on this, and I think this is a point that I think is important to try to get consensus on or to make a recommendation on. I may be wrong, and maybe we are too conservative in our view of things, but I've heard a lot of other people express that same perspective on this.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Yup. Do others have thoughts on this? And this will be – we can put this as a topic for discussion when we have a broader group on the call as well. Larry, can I – how do you deal with it at Reliant?

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
Can you hit me with that question again?

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Yeah, it's related to – I'm sorry, we're on slide 6 and it's the first point that says that providers have a certain degree of discretion over providing or denying a parent access to minor's health information if it's – as long as it's a licensed healthcare professional and they exercise professional judgment. And one thing that John Houston was saying is that at UPM – I guess is it at UPMC, John, where you're talking about –

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
Yes, that's correct.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
– that their policy is that essentially the information sharing or information sharing protections are sort of are linked to the consent protections – the independent consent protections that a minor has –

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
Yeah, so if a minor –

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
– and if that's...go ahead.

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
So if a minor has an independent right to consent for treatment that then is a corresponding right to privacy and that the parent is then not entitled to access to that record of such care that the minor consented to.

**Gayle Harrell, MA – Florida State Representative – Florida State Legislator**
However – this is Gayle, however, there are states, and Florida is one of them, that requires in the case of abortion that even though the minor does have the ability to independently consent for an abortion, that the parent must be notified within a certain amount of time.

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
So this is Larry. What we – to the extent that our adolescents have a separate access security for when they have a patient portal, so that the parents have pretty much almost no access to the patient's record during their adolescent years, we have that automatically in place. What we don't for specific cases, we'll just restrict the entire chart if we think it's too complicated, because we really don't have anything more sophisticated than that built in.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Right. Okay. So I think this will be a very good and rich area for us to sort of think about the variation that's the allowable variation that's out there. And to John's point, perhaps provide a set of recommendations to try to give a little bit firmer guidance on how to think about this.

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

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

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Again, being cognizant of state variation. Sorry, go ahead.

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
Right and where there is a firm obligation under state law, that's one thing. But I think it would be good in the absence of that to have some type of, if it's possible, some type of recommendation as to how this should be treated.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Right, right. Yeah and I will note that this is the case where state or other applicable law is silent, that's just what we're talking about here, where this discretion's allowed. So, the second point with regard to discretion is that under the Privacy Rule, a provider – and I've got to say, this one confuses me, so, I think we'll be coming back to this as well, but I'd love for anyone to clarify this one. Under the Privacy Rule, a provider is permitted to share a patient's health information with friends and family aiding in their care as long as the patient doesn't object. But there are no special provisions regarding minors thus, where providers may share a minor's health information with friends and family, including parents, even if the minor has the right to consent to treatment under state law, provided that the minor does not object. So the whole –

**Kitt Winter – Director, Health IT Program Office – Social Security Administration**
I'm sorry –

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
So the whole – sorry, go ahead.

**Kitt Winter – Director, Health IT Program Office – Social Security Administration**
This is Kitt, can you just clarify that again?

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
I don't think I can.

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

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
Hi, this is Linda Sanches, would you like me to give an example?

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Oh, great.

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
Okay. This is – the friends and family provision that was specifically drafted to permit entities to make important disclosures to friends and family without having to get written authorization or some kind of written consent, because so often the discussions happen very quickly. So an example with an adult would be, if John goes to the hospital after having had a car accident and the woman runs in and says she says John's mother, the doctor can then describe what's going on with John as long as John has not previously objected when he had a chance to.

Okay, so if John is unconscious, the provider can make the decision to talk about it with the parent, if he feels it's in the best interest of the patient. If John has said, if my mother comes in, don't tell her anything, then the provider may not disclose that information to the mother. And this is true whether John is a minor or an adult. So that's the point here, where there's no special provision. If John is a minor, it doesn't matter what his relationship is to – whether he's an emancipated minor or not, his mother still might come in and ask for information and these rules would still apply. Is that helpful?

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
So the child is basically is treated like an adult in all respects.

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
In terms of the way this provision of the rule works.

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

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
Because it has nothing to do with whether or not the friend or family member is a personal representative, this is just a section of the rule that promotes providers to use their best judgment as to what's in the best interest of the patient in terms of having these communications. Which often just happen in an informal way and often you can get the consent or assume the assent of the patient, because of what's happening in the room. If John is awake and his mom walks in and he says, oh mom, great, here's the doctor, the doctor can perhaps presume that he can talk in front of the parent. Sometimes that isn't the case and you need to get – you might want to talk to John beforehand and find out whether it's okay to talk about it with the mother. But it's to allow those kinds of informal discussions without having to get a written consent.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Right. Okay. That is very helpful, thank you Linda.

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
You're welcome.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
So I think the underlining of, there are no special provisions, is really the main point there with respect to the minors issue.

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
Right.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Okay, next slide, please. So next I think we're going to get into Title 42. Yeah, was that a groan? So there are – Title 42, we've all – we're all very familiar with that now as it relates to adults. With respect to minors, if a minor patient acting alone has the legal capacity under state law to apply for and obtain alcohol or drug abuse treatment, then any written consent for disclosure may be given only by the minor patient. So if state law allows them the independent right to apply for alcohol or drug abuse, then their parent may not give the consent for disclosure that we had talked about with adults.

The parent can't do that on behalf of the child if the child has the independent right to apply for alcohol or drug abuse treatment on their own, which is going to vary state by state. And that includes, but isn't limited to any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement, which is sort of an interesting clause there. So first of all let me pause on this one and see if there's any discussion on this. So I guess does this imply – what does this imply then for getting paid for treatment to the extent that insurance covers it, that second piece about any disclosure of patient identifying information?

**David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College**
This is David Kotz. It seems to me that this means that if the patient, the minor, wants to obtain this kind of treatment and not have their parents know about it, then they have to take care of the financial reimbursement themselves.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Themselves, yup.

**David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College**
The way I read it.

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

**David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College**
Now, because any exposure of the need for financial reimbursement would release information about the treatment, at least the presence of it.

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

**Gayle Harrell, MA – Florida State Representative – Florida State Legislator**
And does that – this is Gayle, would that not apply also under other circumstances, for instance sexually transmitted diseases and things of that sort? Does it not apply across the board?

**David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College**
That would make intuitive sense.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Yeah it would.

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
Hi, this is Linda Sanches again, I'm in no way an expert to opine on alcohol and drug abuse treatment requirements. I would just note though that in the Privacy Rule where individuals can ask for confidential communications, if that meant that the health insurance couldn't be used, then they are required to – or the provider may require them to explain how they're going to otherwise be reimbursed.

**David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College**
Right, because this would be the HIPAA Omnibus Rule –

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
Yes.

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

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
Well, that's assuming the child's going to pay cash though.

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

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
– simply not able to express a way to pay.

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

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
Presumably no –

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

**David F. Kotz, PhD – Associate Dean of the Faculty for the Sciences – Dartmouth College**
I mean it doesn't mean the patient can't use the family insurance policy, but that would presumably indirectly expose the information to the parent.

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
Well, it depends on the provider system, some might be able to segregate that EOB and other things like that so that they don't get sent to the family –

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

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
– I know we as an organization do that, we have a way to suppress that.

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
Are health plans obligated to do that?

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
I don't know if they're obligated to, but I would think that there has to be some capability or some do otherwise.

**Gayle Harrell, MA – Florida State Representative – Florida State Legislator**
(Indiscernible)

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Okay, why don't we come back to this issue. We can find out some more information on this. Go ahead.

**Gayle Harrell, MA – Florida State Representative – Florida State Legislator**
Yeah, this is Gayle. I really think we need some additional clarity and information on that.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Yup, yeah.

**Gayle Harrell, MA – Florida State Representative – Florida State Legislator**
– because and not just on mental health and substance abuse, but across the board.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Yup, yeah, I think that's a good point, Gayle. Okay. And next slide, please, part 2 of the Title 42. Where state law requires consent of a – where state law requires consent of a parent, which is – the previous case was where state law gives the minor the independent right to apply on their own. So in this case, where state law requires the consent of a parent, any written consent for disclosure must be given by both the minor and the parent. And the fact of a minor's application for treatment may be communicated to the minor's parent, guardian or other person only if the minor has given written consent to disclosure or the minor lacks the capacity.

So, where does that leave us. So in the first one, what's different about this than the regular Title 42 is that – and, actually I think, and other types of disclosure which don't have – which don't fall under the Title 42 umbrella, where a parent has the full right to control the information flow, in those cases, without any other special cases, that in this case, any disclosure requires both the minor and the parent to give the written consent. And the fact that the minor got treatment is – requires written consent for the disclosure, unless the minor can't give – can't – doesn't have the capacity to give that consent. Yet more complex business rules to build into an EHR.

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
I feel sorry for the vendors.

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

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
David's all over this, he's already – he's coding it as we're talking.

**David McCallie, Jr., MD – Senior Vice President, Medical Informatics – Cerner Corporation**
No, I'm just listening. I mean, the issue is going to come down to, if you do code it all up, who's going to manage it. And what's it going to do to the workflow and it's like our redisclosure debate of the previous topic, it might be theoretically possible to support all those rules, but the impact on daily operations could be pretty profound.

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

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
Or you end up in the same place, which is, the people just simply decide to segregate the two.

**David McCallie, Jr., MD – Senior Vice President, Medical Informatics – Cerner Corporation**
Yeah, yeah. Oh, absolutely. Yup.

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
More hassle than it's worth.

**David McCallie, Jr., MD – Senior Vice President, Medical Informatics – Cerner Corporation**
That's what happens today.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
And if that complex set of rules is written, how much reliance – at that point, the provider is placing full reliance on the software's ability to have figured all that out properly. So all the liability will fall back to Cerner, that's okay, David, right?

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

**Gayle Harrell, MA – Florida State Representative – Florida State Legislator**
(Indiscernible)

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

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
If we could just all the states to agree on one set of rules, this would be no problem.

**Gayle Harrell, MA – Florida State Representative – Florida State Legislator**
Good luck.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
I think coding into the software is going to be easier.

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

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Something tells me.

**Gayle Harrell, MA – Florida State Representative – Florida State Legislator**
Yeah, good luck.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Okay, next slide please. So just stepping back for a second, the age at which a pati – a person may lawfully consent to care varies with the health condition at the time. So here we're just sort of stepping back, we talked about all these different dimensions of it. Now looking at the statewide variation, the age first off varies with the particular condition, so on that dimension it varies. Minors in all states, it turns out, have the right to consent to testing and treatment for sexually transmitted disease. I think that's the only of these special cases where we can say it applies to all states and something that isn't specifically federal law. But also in many states, and it's not the same states I don't think where this applies, minors also have the independent right to consent to outpatient treatment for mental health, which I think Gayle had raised earlier, prenatal care, contraceptive services and/or, I think these are all and/or, alcohol and substance abuse as well. And then the – it's complex in every dimension, right, so the age of consent for these varying conditions varies not only among states but also within a given state meaning that you may – it may be that the patient has independent consent rights in two categories, but the ages at which they're able to exercise those rights differ. So in one state the age of consent is 12 for treatment of an STD, but 14 for substance abuse. Next slide, please.

So finally, this is the last thing we're going to discuss before coming back to, so what does all this matter to us as a Tiger Team and where – how do we need the frame our discussions to consider the material impacts on health information technology and the use of health information technology. We did, you may recall, in February there was a Health IT Buzz Blog post where we sought comments from the public on the issue of personal representatives and VDT and some of those comments pertained to the issues of minors. So, there were three themes, one was pediatric patients, the concern that there must be automatic shutoff of records once the patient reaches 18. So the obvious issue that that would present for the ability to have continuous access to information. Now all of a sudden, you have a set of rules that puts providers in the situation of feeling like, at the age of 18 they've got to have automatic shutoff of records until the patient – until the minor comes in and expresses their preferences.

Adult children, individuals 18+ who are now still included on the insurance of their parents raises this issue that we are – similar kind of issue about, is there an ability to segregate the information while still allowing someone to get reimbursement through a health plan that's paid for by the parent. And then the custodial questions, which I think Larry raised earlier, which is situations of divorce. For example, how do we think about legal versus physical custody and the information access issues related to that. Next slide, please.

So again, the themes that came through in the responses to the blog, EHR vendor limitations, and this was a perception, comments back that very few vendors are set up to allow for granular control to protect parental access to the various different types of clinical data that we're talking about here. And I think that's probably not – that's an accurate statement given the complexity of all of this, no vendor, I think, has probably been able to make a whole lot of headway in providing this kind of granular control, because of the complexity of the issues themselves as well as the incredible statewide variation – or nationwide variation across states.

And then the exceptions, how you segregate PHI for just some of the cases that are listed here, a minor female for health information related to birth control and abortion, or a pregnancy. I think we've covered a number of these already in our previous discussions, but just public comments also reflecting that there are a lot of special cases here that need to be addressed in any approach to access through electronic means. So that's all of the material that – first off I want to thank the folks from MITRE for putting this together, because it's very, very hard to synthesize the huge corpus of information. I think it was a great summary for us. So why don't we just go to the next slide, which brings us back to this slide on the framing issues.

And see first off, are there any issues that you think that we haven't covered by way of just reference material, because we can try to dig that out. I know one area that was identified already is this whole issue of health plans and the connection between information sharing and reimbursement, so we'll get some more information on that. If there are any other areas, let's talk about those and then let's dive into the question of framing our policy issues for our discussions going forward.

**Sherri Morgan, JD, MSW – Health Information Privacy Specialist - Office of Civil Rights**
This is Sherri Morgan, I joined the call after you took roll, I'm also with OCR.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Uh huh. Great, welcome.

**Sherri Morgan, JD, MSW – Health Information Privacy Specialist – Office of Civil Rights**
And this issue isn't unique to minors, but it does affect them and that would be the handling of separately maintained psychotherapy notes, because that is one of the ways that a provider can provide some privacy to them with respect to their parents without going through all these other consent issues.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
So, just let me understand, is that – are you – is there a state level variation on the –

**Sherri Morgan, JD, MSW – Health Information Privacy Specialist – Office of Civil Rights**
No.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
No.

**Sherri Morgan, JD, MSW – Health Information Privacy Specialist – Office of Civil Rights**
No, that's just under HIPAA, the personal representative does not have, nor the patient, have a federal right to access separately maintained psychotherapy notes.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Oh, okay.

**Sherri Morgan, JD, MSW – Health Information Privacy Specialist – Office of Civil Rights**
And so to the extent that the EHR technology is or isn't enabled to utilize the psychotherapy notes function –

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

**Sherri Morgan, JD, MSW – Health Information Privacy Specialist – Office of Civil Rights**
– that would be an issue, but that's one way that a provider can maintain a minor's confidentiality without having to go through all of these other analyses.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
In that one area.

**Sherri Morgan, JD, MSW – Health Information Privacy Specialist – Office of Civil Rights**
In that one area.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Yeah, yeah.

**Sherri Morgan, JD, MSW – Health Information Privacy Specialist – Office of Civil Rights**
And that is a sensitive one in particular for adolescents –

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

**Sherri Morgan, JD, MSW – Health Information Privacy Specialist – Office of Civil Rights**
– or for children whose parents are divorcing and they're talking about mom and dad and mom and dad want to demand access to that information.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Yup. Okay. Other areas?

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
Are we going to at all focus on research related matters in this respect?

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

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
Because, I actually had an odd situation come up this week regarding minors and authorization for release of research records to parents. It may be such a fringe issue that it's not really one worth talking about in this context, I don't know.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Yeah, I don't know. Are those – are research records normally separately maintained, John?

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
They – well, it depends on the institution, but they may be maintained under some type of IRB protocol, so they would probably be separate except in so far as they might be involved in a clinical trial –

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

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
– and if so, they maybe become part of their more general electronic medical record.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Right, right.

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
Yeah, for instance – this is Larry, we often interdigitate those right in the medial record because they're – the kinds of studies we're doing are part of the – become part of the care of the patient.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Right. So, I'm not aware of whether there are any specific laws or statutes related to treatment of minor – of information on minors with respect to research, but IRB findings or IRB restrictions are certainly case by case could come into play there.

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
Yeah, and again, it may be this is more fringe than we want in terms of a discussion about this, but –

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Yeah, it sounds like it, but we may come back to it. Okay. Are there any other areas that – it seems like at least at first pass the VDT issue is the one that presents itself most clearly as it relates to all the issues that we were just talking about. And then this redisclosure issue, which it may be that there's not an issue there at the end of the day, but it just at least at first pass seemed like there's the possibility of there being an issue that we at least want to go down the road and convince ourselves whether there is or not.

I assume the folks from MITRE maybe can help with this, with the issues related to FERPA, is that related to any medical record information through like a school health service that would then fall under FERPA because it's being held by a school? Is anyone from MITRE on the phone who put this material together?

**W**
They may be on mute or unable to get through. They could have –

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

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
Hi, this is Linda Sanches from OCR.

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

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
Umm, FERP – we've actually put out some guidance on FERPA, which I don't have at hand, so we can certainly get back to you on this. But generally speaking, if something is a school record and is sort of held by the school about a student, then that record generally is under FERPA and not HIPAA. But if it's part of a re – if it's a – say a student – the hospital maintained as part of a larger academic medical center and the student goes in and gets care using – or somebody else goes in and gets care, that information is covered by HIPAA and not FERPA. But I'm not being very articulate about this. We can certainly send you some additional information.

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

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
But generally speaking, if it's covered by FERPA, it's not covered by HIPAA.

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

**Linda Sanches, MPH – Senior Advisor for Health Information Privacy – Office of Civil Rights**
So if you have an electronic health record that's covered by HIPAA, you don't have to really think about FERPA.

**Kathryn Marchesini, JD – Policy Analyst – Office of the National Coordinator for Health Information Technology**
And there's some general information, I guess, on the backup slides on 27 and 28, but yeah Linda, maybe on the next round we can circle back with you and have the MITRE folks to get that specific guidance as HIPAA relates to FERPA.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Okay. Well, I mean I think that in terms of – we know that the VDT question is the biggest and most obvious one that we're going to have to address. So, I'll talk with Deven offline, but I think if we set up for the next couple of meetings walking through sort of a set of use cases and thinking about the VDT implications for a wide variety of circumstances. Maybe that'll help us sort of flesh out the issues there and start to see what the critical issues are that we're going to want to weigh in on as a Tiger Team. And then we can move to the redisclosure issues after that. Does that make se – I forget how many – when our next call is and how many calls. Do we have on the work plan how many calls we have for this, Michelle or Linda?

**Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator for Health Information Technology**
I have to look, I'm sorry, Micky.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Okay, that's all right. Okay, well unless there are any other comments, I would propose at just a high level that what we plan to do is start first with VDT, I think that's going to take us at least a couple of meetings. And then we'll – that'll help inform probably the rest of the roadmap there, but I'm going to guess that we'll then move to the issue of provider-to-provider exchange and see what issues there may be there, and then we can see whether Title X or some smaller use cases are important enough to warrant some attention as well.

**Kathryn Marchesini, JD – Policy Analyst – Office of the National Coordinator for Health Information Technology**
Hi, Micky, this Kathryn, we were on mute. The next Tiger Team meeting is on July 14 and we do not have a dedicated amount of number of meetings to have on this topic, it kind of is up for the group and if you thought a virtual hearing or hearing from various folks would be helpful, it's something for just the group to think about.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Right, okay.

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
Micky, this is Larry. As I look at this and I think about what we just went through before with the data segmentation piece. It almost feels like we're going to end up in a similar place where we say, okay, zero is where there is no functionality, Stage 1 is where we – when we find these cases that are patient specific where something special has to be done, we just segregate the whole record. And then level 3 – the next level is where we have some unfathomably complex, sophisticated rules that can be state and patient specific. And then we – and we say, okay, well that last phase is a fantasy, so the only thing that we can expect in the near future is that we can flag a record as basically being needing to be sequestered and someone has to manually figure out what to do with it.

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

**John Houston, JD – Vice President – University of Pittsburgh Medical Center; National Committee on Vital & Health Statistics**
But I think it go – this is John Houston. I think it goes back to what's the triggering point, at what point do some of these things attach and that's probably as meaningful as what do you do after it occurs.

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

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

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Yup, yup. Yeah, I think the one difference between the framework that we had before is that in this case, when you think about the VDT, in this case this is the provider having the ability to, with the click of a button, make things accessible to a parent. Where in the previous case it was always this transition of care kind of scenario of sending from one provider to another, so it may be that there are some special issues there that we're going to need to deal with. But I agree, it may be that that framework generally kind of holds. DS4P for kids.

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

**Lawrence Garber, MD – Internist/Medical Director for Informatics – Reliant Medical Group**
DS4PFK.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Excellent. Okay, well, we have an acronym, so that's quite an accomplishment for the day. Okay, well, unless there are any other thoughts here, I would suggest that we move to public comment. And on July 14 is our next call and we will begin with the consideration of view, download, transmit.

**Public Comment**

**Michelle Consolazio – Federal Advisory Committee Act Program Lead – Office of the National Coordinator for Health Information Technology**
Okay operator, can you please open the lines.

**Caitlin Collins – Junior Project Manager – Altarum Institute**
If you are on the phone and would like to make a public comment please press *1 at this time. If you are listening via your computer speakers you may dial 1-877-705-2976 and press *1 to be placed in the comment queue. We do have a comment from Ayana Russell. You may proceed.

**Ayana Russell, CIPP/US/G – Privacy Strategy and Policy Professional - MITRE**
Hi, this is Ayana Russell from MITRE. I just wanted to confirm for you Micky that Linda Sanches, I think your comments were correct. We provided the information in the background on FERPA just because we thought it – there was potential if the health records of FERPA are shared with – or integrated into a health record for a minor, then it would become an issue. So we just wanted to bring it up in case anyone had any use cases and thought that that might be applicable to the conversation.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Great. Thank you, Ayana.

**Caitlin Collins – Junior Project Manager – Altarum Institute**
We have no further comment at this time.

**Micky Tripathi, PhD – President and Chief Executive Officer – Massachusetts eHealth Collaborative**
Okay. Great. Well thank you, everyone.

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