



Meeting Notes

Health Information Technology Advisory Committee Information Blocking Task Force Workgroup 1: Relevant Statutory Terms and Provisions March 6, 2019, 12:00 p.m. – 2:00 p.m. ET Virtual

The March 6, 2019, meeting of the Information Blocking Task Force Workgroup 1: Relevant Statutory Terms and Provisions of the Health IT Advisory Committee (HITAC) was called to order at 12:00 p.m. ET by Lauren Richie, Designated Federal Officer, Office of the National Coordinator for Health IT (ONC).

Roll Call

MEMBERS IN ATTENDANCE

Andrew Truscott, Co-Chair, Accenture
Michael Adcock, Co-Chair, Individual
Cynthia Fisher, Member, WaterRev, LL
John Kansky, Member, Indiana Health Information Exchange
Denni McColm, Member, Citizens Memorial Healthcare
Sheryl Turney, Member, Anthem

ONC STAFF

Mark Knee, Staff Lead
Lauren Richie, Branch Chief, Coordination, Designated Federal Officer

Call to Order

Lauren Richie called the meeting to order, conducted roll call, and turned the meeting over to Andy Truscott.

Welcome and Introductions

Andy Truscott welcomed the group and turned it over to Mark Knee, ONC to walk through how the group will be reviewing the materials for today's discussion.

Mark Knee shared a Google document that was created for the group to feedback and comment. The document includes regulation text and preamble pages (he noted it is important to review the preamble as well as the regulation text).

§ 171.102 Definition of Electronic Health Information



HEALTH INFORMATION EXCHANGE OR HIE

Networks and Exchanges

- **Mark Knee** shared where these definitions came from within the notice of proposed rulemaking ([NPRM](#)) and can be found on page 339.
- **Cynthia Fisher** shared a concern that defining HIN/HIE limits future interpretation and could be gamed to excluding significant parties who hold information. She suggested that these should be defined as they are today.
- **Cynthia Fisher** asked for there to be a cross-check with the definition of information blocking so that “exchange (such as HIE),” and networks (such as HIN)” are captured.
- **John Kansky** was concerned about individuals who are reviewing the documents to have a clear understanding of the definition.
- **Mark Knee** clarified that there are four categories of actors covered under 21st Century Cures (Cures).
- **Denni McColm** asked if there are different requirements that apply to the different actors?
 - **Mark Knee** confirmed that the penalties are different for developers, networks, and exchanges versus providers (this comes from the Cures).
 - **Cynthia Fisher** expressed concern that they are all not the same.
- **John Kansky** questioned if the rules are different across all actors.
 - **Mark Knee** confirmed that this is true; it is only the penalties that are different.
- **John Kansky** questioned if there are unintended consequences by being defined as both an HIE and provider. He mentioned that it could be possible to put organizations out of business to comply.
 - **Mark Knee** noted that there could be possible that this situation could fall into an exception.
- **John Kansky** questioned the intent of the definition is to make sure that health information exchanges and networks are not left outside of the definition.
- **Cynthia Fisher** felt that ONC is consistent with Cures within the NPRM
 - **Denni McColm** felt that ONC was not consistent.
- **Andy Truscott** shared the definition in Cures for information blocking.
 - **Mark Knee** shared that there is a difference in the knowledge requirement.
- **John Kansky** questioned why define four actors.

Andy Truscott suggested transitioning the discussion to the parties affected by the information blocking provision before closing this discussion.

Parties Affected by the Information Blocking Provision

From page 331 of the NPRM: Section 3022(a)(1) of the PHSA, in defining information blocking, refers to four classes of individuals and entities that may engage in information blocking and which include: health care providers, health IT developers of certified health IT, networks, and exchanges. We propose to adopt definitions of these terms to provide clarity regarding the types of individuals and entities to whom the information blocking provision applies. We note that, for convenience and to avoid repetition in this preamble, we typically refer to these individuals and entities covered by the information blocking provision as “actors” unless it is relevant or useful to refer to the specific type of individual or entity. That is, when the term “actor” appears in this preamble, it means an individual or entity that is a health care provider, health IT developer, exchange, or network. For the same reasons, we propose to define “actor” in § 171.102.



Discussion

- **Denni McColm** noted that the Public Health Service Act (PHSA) definition does not include payers and clearing houses.
- **Andy Truscott** suggested any party who processes electronic health information as a definition.
 - **Cynthia Fisher** commented that this is very broad.
- **Mark Knee** committed to emailing the group the different definitions of providers (e.g., Health Insurance Portability and Accountability (HIPAA), PHSA) and the definition of electronic health information from HIPAA and the preamble in the NPRM. The group can then use this information as a discussion point for the next meeting.

Request for Comment Regarding Price Information

- **Mark Knee** clarified that there is conduct that could implicate the information blocking provision, but not violate the provision.
- The group decided that they need to do more reading on this section and come back to it during a future meeting.
 - **Andy Truscott** reminded the group to be wary of the unintended consequences when reviewing.

Lauren Richie opened the lines for public comment.

Public Comment

There was no public comment.

Comments in the public chat

Denni McColm: PHSA Definition - CARE PROVIDER.—The term ‘health care provider’ includes a hospital, skilled nursing facility, nursing facility, home health entity or other long term care facility, health care clinic, community mental health center (as defined in section 1913(b)(1)), renal dialysis facility, blood center, ambulatory surgical center described in section 1833(i) of the Social Security Act, emergency medical services provider, Federally qualified health center, group practice, a pharmacist, a pharmacy, a laboratory, a physician (as defined in section 1861(r) of the Social Security Act), a practitioner (as described in section 1842(b)(18)(C) of the Social Security Act), a provider operated by, or under contract with, the Indian Health Service or by an Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act), tribal organization, or urban Indian organization (as defined in section 4 of the Indian Health Care Improvement Act), a rural health clinic, a covered entity under sec

Next Steps and Adjourn

Andy Truscott reminded members to provide comment in the shared Google document. The next meeting will be held on March 7 at 1:30 p.m. ET

Lauren Richie adjourned the meeting at 1:49 p.m. ET