# Information Blocking Task Force Meeting

Andrew Truscott, co-chair
Michael Adcock, co-chair

March 15, 2019

The Office of the National Coordinator for
**Health Information Technology**
Health IT Advisory Committee

# Agenda

- Call to Order/Roll Call

- Overview of Work Group 1- Relevant Statutory Terms and Provisions Progress

- Overview of Work Group 2- Exceptions Progress

- Overview of Work Group 3- Conditions and Maintenance of Certification Progress

- Group Discussion of Big Picture/Overarching Issues

- Public Comment

- Next Steps and Adjourn

# Information Blocking  Task Force Charge

- **Overarching Charge**: Provide recommendations on policies related to information blocking; the "information blocking," "assurances," and "communications" conditions and maintenance of certification requirements; and the enforcement of all the conditions and maintenance of certification requirements.

- **Specific Charges:** Provide recommendations on the following topics:

  - Information Blocking:

    ➢ ONC definitions/interpretations of certain statutory terms and provisions, including the price information request for information

    ➢ Seven exceptions to the information blocking definition, and any additional exceptions (request for information)

    ➢ Complaint process

    ➢ Disincentives for health care providers (request for information)

  - "Information blocking," "assurances," and "communications" conditions and maintenance of certification requirements

  - Enforcement of all the conditions and maintenance of certification requirements

# Draft Timeline

| Meeting Date | Draft Agenda Items |
|---|---|
| Week 1<br>Feb 18 – Feb 22 | • Overview and HITAC Charge<br>• Overall process and timing for providing recommendations |
| Week 2<br>Feb 25 – March 1 | • Schedule TF Kick-off Meetings<br>• Review Charge/Work Plan |
| Week 3<br>March 4 – March 8 | • Each TF meets<br>• Discussion/early draft recommendations |
| Week 4<br>March 11 – March 15 | • Each TF meets<br>• Finalize draft recommendations for HITAC review |
| **Week 5**<br>**March 18 – March 22** | • **Present draft recommendations to HITAC** |
| Week 6<br>March 25 – March 29 | • Update and revise recommendations |
| Week 7<br>April 1 – April 5 | • Update and revise recommendations |
| **Week 8**<br>**April 8 – April 12** | • **Present progress on draft recommendations to HITAC** |
| Week 9<br>April 15 – April 19 | • Update and revise recommendations |
| **Week 10**<br>**April 22 – April 26** | • **TF presents final recommendations to HITAC (if not finalized sooner)** |
| **Week 11**<br>**April 29 – May 2** | • **Final transmittal letter from HITAC** |
| **NLT May 3, 2019** | • **HITAC recommendations are submitted to National Coordinator** |

# Group 1 - Relevant Statutory Terms and Provisions

| Meeting Dates | Topics |
|---|---|
| Week 1: February 18-22 | • Overview and HITAC charge<br>• Overall process and timing for providing recommendations |
| Week 2: February 25 – March 1 | • **Kick-off meeting (March 1)** |
| Week 3: March 4-8 | • **Meeting 1:** Health information networks/exchanges<br>• **Meeting 2:** EHI, including the price information request for information |
| Week 4: March 11-15 | • **Meeting 1:**<br>   • Practices that may implicate the information blocking provision<br>   • Parties affected by the information blocking provision and exceptions<br>• **Meeting 2:** Wrap-up and summary of work group draft recommendations |
| Week 5: March 18-22 | • **HITAC Committee Meeting (March 19-20) – Present draft recommendations** |

# Work Group 1 – Topics Discussed

- **Health information networks/exchanges**
  - <u>Proposal</u>: Distinction between HIE and HIN should be clearer.
    - ➤ Discussed whether the definitions would cover the broad scope of entities that such terms should cover based on the intent of Cures.
  - <u>Proposal</u>: Revise definition of HIE to mean "an individual or entity that enables, facilitates, or performs the access, exchange, processing, handling or other use of electronic health information."
  - Still working through HIN definition.
- **EHI definition**
  - <u>Proposal</u>: Add text in preamble that clarifies that "information" is inclusive of human or machine readable form.
- **Price information**
  - Consensus that proposed definition of EHI should be read to include price information.
    - ➤ Work group will review ONC's RFI regarding price information and provide more detail about the scope and parameters of price information that would be included and the implications of including such information in the definition.

# Group 2 - Exceptions

| Meeting Dates | Topics |
|---|---|
| Week 1: February 18-22 | • Overview and HITAC charge<br>• Overall process and timing for providing recommendations |
| Week 2: February 25 – March 1 | • **Kick-off meeting (March 1)** |
| Week 3: March 4-8 | • **Meeting 1:**<br>    • Preventing Harm<br>    • Promoting the Privacy of EHI<br>    • Promoting the Security of EHI<br>• **Meeting 2:**<br>    • Recovering Costs Reasonable Incurred<br>    • Responding to Requests that are Infeasible |
| Week 4: March 11-15 | • **Meeting 1:**<br>    • Licensing of Interoperability Elements on RAND Terms<br>    • Maintaining and Improving Health IT Performance<br>• **Meeting 2:**<br>    • Additional exceptions (request for information)<br>    • Complaint process<br>    • Disincentives for health care providers (request for information)<br>    • Wrap-up and summary of work group draft recommendations |
| Week 5: March 18-22 | • **HITAC Committee Meeting (March 19-20) – Present draft recommendations** |

# Work Group 2 – Topics Discussed

- **Promoting the Security of EHI**
  - ➢ Proposal: Clarify the documentation requirement for when the practice does not implement an organizational policy.
  - ➢ Consensus that when the requestor is the data subject (patient), then security is no reason to prevent sharing, unless there is legitimate doubt of the identity of the patient; determining whether the current drafting requires a proposed recommendation.
- **Responding to Requests that are Infeasible**
  - ➢ Discussion of meaning and application of providing a "reasonable alternative."
  - ➢ Group thinks the requirement that the actor "timely respond" is unclear; determining whether to propose a revision/clarification.

# Work Group 2 – Topics Discussed (cont.)

- **Licensing of Interoperability Elements on RAND Terms**
    - ➤ <u>Proposal</u>: Add requirement that licensors must publicly post contact info for requestors to contact them <u>and</u> requirement that requestors must use that publicly posted list to contact licensors.
    - ➤ <u>Proposal</u>: 10-day response period in (a) is unreasonable for offering license.
        - • Considering proposing alternate time frame.
    - ➤ <u>Proposal</u>: Build in timeframe for licensor to acknowledge receipt of request into the overall response timeline.
        - • Suggestion of 72 hours to acknowledge receipt.
    - ➤ Considering proposal to clarify the scope of rights.
    - ➤ Did not get through the entire exception.

# Group 3 - Conditions and Maintenance of Certification

| Meeting Dates | Topics |
|---|---|
| Week 1: February 18-22 | • Overview and HITAC charge<br>• Overall process and timing for providing recommendations |
| Week 2: February 25 – March 1 | • **Kick-off meeting (March 1)** |
| Week 3: March 4-8 | • **Meeting 1:**<br>   • Information Blocking<br>   • Assurances<br>• **Meeting 2:** Communications |
| Week 4: March 11-15 | • **Meeting 1:** Enforcement of all the conditions and maintenance of certification requirements<br>• **Meeting 2:** Wrap-up and summary of work group draft recommendations |
| Week 5: March 18-22 | • **HITAC Committee Meeting (March 19-20) – Present draft recommendations** |

# Work Group 3 – Topics Discussed

- **Assurances**
  - ➤ <u>Proposal</u>: 3-year retention period for products that are withdrawn.
  - ➤ <u>Proposal</u>: ONC should retain records on the CHPL indefinitely for ongoing reference of which products were certified over which time period.
  - ➤ <u>Proposal</u> **:** Revisit TEFCA RFI to make recommendations when revised draft of TEFCA is published (or have the other TEFCA task force address it).
- **Communications**
  - ➤ <u>Proposal</u>: Clarify that administrative functions could be "non-user facing aspects."
    - Determining how to address the issue; possibly through functional definition or examples in preamble.
  - ➤ <u>Proposal</u>: Unintended consequences of "fair use" and other usages should be further explored by ONC. There are concerns about risks to vendor intellectual property that the task force wishes to be sensitive to; we do not wish to impinge upon innovation.
  - ➤ <u>Proposal</u>: Draw a distinction around purpose of use regarding screenshots.
    - Still determining details of proposal.

# Work Group 3 – Topics Discussed (cont.)

- **Communications**
  - ➢ <u>Proposal</u>: Clarify via a list which third-party content might appear in a screenshot. Enumerating elements per screen is not feasible.
  - ➢ <u>Proposal</u>**:** Eliminate 2-year timeframe for contract amendment and propose update at next renewal.
  - ➢ <u>Proposal</u>: Unintended consequences of "fair use" and other usages should be further explored by ONC. There are concerns about risks to vendor intellectual property that the work group wishes to be sensitive to; do not want to impinge upon innovation.
  - ➢ <u>Proposal</u>: Create 3rd communication bucket for "unprotected" communications (i.e., false communications, attorney-client privilege, etc.).
- **Enforcement**
  - ➢ <u>Proposal</u>: Use both email and certified mail for notices of initiating direct review, potential non-conformity, non-conformity, suspension, proposed termination, and termination.
- **Ban**
  - ➢ Discussion of whether appropriate to list ban that is lifted, and if so, what the appropriate time period would be.
- **Self-developers**
  - ➢ <u>Proposal</u>: Call out an exception to proposed § 170.403(a)(2)(ii)(A) (Communications) for self-developed systems, so that communications by health IT users aren't restricted by virtue of being employees of the same company doing the development.

# Public Comment

**To make a comment please call:**

# Dial: 1-877-407-7192

*(once connected, press "*1" to speak)*

**All public comments will be limited to three minutes.**

You may enter a comment in the
**"Public Comment"** field below this presentation.

Or, email your public comment to [onc-hitac@accelsolutionsllc.com](mailto:onc-hitac@accelsolutionsllc.com).

*Written comments will not be read at this time, but they will be delivered to members of the Workgroup and made part of the Public Record.*

The Office of the National Coordinator for
Health Information Technology

Health IT Advisory Committee

# Meeting Adjourned

@ONC_HealthIT          @HHSONC          HealthIT.gov