



Meeting Notes

Health Information Technology Advisory Committee Trusted Exchange Framework and Common Agreement Task Force July 2, 2019, 12:00 p.m. – 2:00 p.m. ET Virtual

Executive Summary

The July 2, 2019 Trusted Exchange Framework and Common Agreement (TEFCA) Task Force (TF) meeting continued the review of recommendations working to refine recommendations in preparation for the presenting to the HITAC at the July 11, 2019 meeting. There were no public comments, but there were comments submitted in the meeting comment chat window.

Event Summary

12:00 p.m.	Call to Order/Roll Call
12:05 p.m.	Review Draft Recommendations
01:50 p.m.	Public Comment
02:00 p.m.	Next Steps and Adjourn

Roll Call

MEMBERS IN ATTENDANCE

John Kansky, Co-Chair, Indiana Health Information Exchange
Arien Malec, Co-Chair, Change Healthcare
Noam Arzt, HLN Consulting
Laura Conn, Center for Disease Control and Prevention (CDC), Federal Representative
Cynthia A. Fisher, WaterRev, LLC
David McCallie, Individual
Aaron Miri, The University of Texas at Austin, Dell Medical School and UT Health Austin
Carolyn Petersen, Individual
Mark Savage, UCSF Center for Digital Health Innovation
Sasha TerMaat, Epic
Grace Terrell, Envision Genomics, Inc.
Sheryl Turney, Anthem Blue Cross Blue Shield
Denise Webb, Individual

MEMBERS NOT IN ATTENDANCE

Anil Jain, IBM Watson Health
Steve L. Ready, Norton Healthcare
Mark Roche, Centers for Medicare and Medicaid Services (CMS), Federal Representative
Andrew Truscott, Accenture



ONC STAFF

Zoe Barber, Staff Lead

Michael Berry, Staff Lead

Alex Kontur, Staff Lead

Morris Landau, Back-up/Support

Lauren Richie, Branch Chief, Coordination, Designated Federal Officer

Kim Tavernia, HITAC Back Up/ Support

Opening Remarks

John Kansky shared that the focus of today's Trusted Exchange Framework and Common Agreement (TEFCA) Task Force (TF) meeting was to review the remaining recommendations working to gather consensus from the members, beginning the discussion with meaningful choice.

Review Draft Recommendations

PRIVACY

Recommendation 11

ONC should clarify the language and policy goals around Meaningful Choice and leave the granular technical requirements to the RCE. The TF recommends clearer definition of "Meaningful Choice" and its scope, to express (a) ONC's intent that, by default, Individuals' EHI is used and disclosed in exchanges under TEFCA unless the Individual exercises a Meaningful Choice to disallow any further, prospective Use and Disclosure, and (b) that, like TEFCA, the Individual's Meaningful Choice only applies to revoke prospective Use and Disclosure in exchanges within TEFCA but not use and disclosure of EHI outside of TEFCA. Policy goals should ensure that Meaningful Choice is not just a "check-the-box" exercise, but that it provides meaningful information and opportunity for discussion about where and how an individual's EHI will be used and disclosed. Consent should be meaningful in that it does the following:¹ (Note: The current definition of Meaningful Choice already captures the first, second, and sixth bullets below, but we include them here to complete the list.)

- Allows the individual advanced knowledge/time to make a decision. (E.g., outside of the urgent need for care.)
- Is not compelled, and is not used for discriminatory purposes. (E.g., consent to participate in a centralized HIO model or a federated HIO model is not a condition of receiving necessary medical services.)
- Provides full transparency and education. (I.e., the individual gets a clear explanation of the choice and its consequences, in consumer-friendly language that is conspicuous at the decision-making moment.)
- Is commensurate with the circumstances. (I.e., the more sensitive, personally exposing, or inscrutable the EHI, the more specific the consent mechanism. Activities that depart significantly from a patient's reasonable expectations require greater degree of education, time to make decision, opportunity to discuss with his/her provider, etc.)
- Must be consistent with reasonable patient expectations for privacy, health, and safety; and

¹Health IT Policy Committee, Privacy & Security Tiger Team. September 1, 2010.
https://www.healthit.gov/sites/default/files/hitpc_transmittal_p_s_tt_9_1_10.pdf



- Must be revocable. (i.e., patients should have the ability to revoke their Meaningful Choice and resume use and disclosure of their EHI under TEFCA at any time. It should be clearly explained whether such changes can apply retroactively to data copies already exchanged, or whether they apply only "going forward.")

TEFCA TF Feedback

The TEFCA TF agreed with the language proposed for this recommendation with the following tweaks suggested:

- Suggested editing to “change the decision regarding participation.”
- It needs to be noted that this is a floor level option

Recommendation 12.a

ONC, in the MRTCs, should *not* allow for the use and disclosure of individuals’ previously-disclosed EHI following an individual’s exercise of Meaningful Choice. This does not mean, however, that one must delete the individual’s EHI from one’s records.

TEFCA TF Feedback

There were differing views on this recommendation, and there likely will be a majority and minority opinion presented to HITAC. Most members did not agree with this recommendation as written, but there were a few members who did agree.

Recommendation 12.5

As drafted, once an individual exercises their MC, TEFCA 2 constrains the prospective use and disclosure of their data to Exchange Purposes whereas prior to the exercise of MC, the use and disclosure was defined by 2.2.2. To avoid introducing unnecessary complexity, the TF recommends that the prospective use and disclosure of an individual’s information after the exercise of MC continue to be defined and constrained by 2.2.2 and not the narrower Exchange Purposes only.

TEFCA TF Feedback

- Anyone who is implementing an authorized TEFCA transaction should receive meaningful choice
- As long as all QHINs maintain and respect meaningful choice, it will be applied
- QHINs, as gatekeepers, should be the only ones who need to worry about this
- Use of the data should be governed by 2.2.2 before and after meaningful choice

Recommendation 13

ONC should clarify how broadly an expressed Meaningful Choice will be applied. Specifically, once exercised by an individual, their Meaningful Choice is expected to be communicated “up” their QHIN branch and shared by their QHIN with the other QHINs. Which organizations in the TEFCA ecosystem are expected to be aware of that individual’s Meaningful Choice and respect it? Only the organization with the Direct Relationship, all Participants or Participant Members under that QHIN branch where the individual has a Direct Relationship, or all QHINs, Participants, and Participant Members across the TEFCA ecosystem?

TEFCA TF Feedback



- Global choice can go to one provider and have it communicated to every provider throughout the TEFCA. Other choice, would have to go provider to provider

Recommendation 15

The MRTCs should require a summary of disclosures only from the entity with the Direct Relationship to the requesting Individual (and their associated QHIN). Such a summary should include disclosures when data has been pulled from and disclosures when data has been requested by the associated QHIN.

TEFCA TF Feedback

- This recommendation, as written, makes the assumption that the provider or patient would know who the QHIN is. Individuals likely don't know what a QHIN is. It is likely the network that needs to be asked, not the QHIN.

SECURITY

Recommendation 21

ONC should defer to the Health IT for the Care Continuum Task Force recommendation. Recommended previously that there could be value to this proposal but more work required. There should be accompanying policy guidance for what to do, when data can and cannot be used, and how duplicate data that is tagged and untangled should be handled.

TEFCA TF feedback

- Updated to reflect the comments provided by the HITAC rather than the Health IT for the Care Continuum Task Force.
- Additional language was also suggested to facilitate policy enablement.

Recommendation 2a

ONC should align TEFCA rules and requirements with the Interoperability Rule:

- Key definitions such as HIE, HIN, and EHI should be the same across both rules.
- Active, good-faith participation in exchange provided through the TEFCA should address, and be evidence for compliance with, information blocking requirements relevant to cross network exchange purposes, uses and modalities provided through TEFCA.
- Because TEFCA only addresses a portion of information exchange activities relevant to information blocking, TEFCA participation alone should not be made a formal exception to information blocking or create a safe harbor
- Participation in TEFCA should not be a condition of certification or requirement for information blocking requirements. It should, however, be the easiest and most direct path to address relevant requirements.
- Placeholder for specific recommendation(s) related to the API requirements for 2015 Edition Certification after further discussion]

TEFCA TF Feedback

- TEFCA should provide application programming interfaces (APIs) on the same timetable as the notice of proposed rulemaking (NPRM).



- Details should be figured out by the Qualified Health Information Network (QHIN) Technical Framework (QTF).

Public Comment

There were no public comments.

QUESTIONS AND COMMENTS FROM THE CHAT WINDOW

Mark Segal: Is further exchange under MC limited to "TEFCA" exchange or applicable to any data initial received via TEFCA by any of the TEFCA entities. I think it is the latter. In other words, an HIE that received data under TEFCA as a Participant initially could not then exchange outside of TEFCA if MC was exercised.

Kathleen Connor: Security Labeling is a term of art and the name of the HL7 labeling vocabulary and syntax standards. Security labels are used to convey jurisdictional, organizational, and individual privacy policies (e.g. consent directives). The labels are used by access control systems to enforce these policies. True, some security labels are about security policies such as CUI labels.

David McCallie: Thanks Kathleen.

Catherine Schulten: on recommendation #23: having each QHIN recognize the authority of each other QHIN's identity proofing decision needs some further clarity. The RCE should require each QHIN to achieve certification to a common IAL design - otherwise there can be misalignment with the method by which a person achieves IAL2 is substantially different between different interpretations of how to apply the NIST specifications

Next Steps and Adjourn

The next meeting of the TEFCA TF is scheduled for July 3 at 2:00 p.m. ET.

The meeting was adjourned at 2:00 p.m. ET