

Governance Workgroup
Draft Transcript
November 17, 2010

Presentation

Judy Sparrow – Office of the National Coordinator – Executive Director

Good afternoon, everybody, and welcome to the Governance Workgroup. This is a Federal Advisory Committee, so there will be opportunity at the end of the call for the public to make comments, and just a reminder, workgroup members, please identify yourselves when speaking.

A quick roll call: John Lumpkin?

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Present.

Judy Sparrow – Office of the National Coordinator – Executive Director

John Glaser? Laura Adams? Leslie Harris, she wasn't sure she could make it. Christine Bechtel?

Christine Bechtel – National Partnership for Women & Families – VP

I'm here.

Judy Sparrow – Office of the National Coordinator – Executive Director

John Mattison?

John Mattison – Kaiser Permanente – Chief Medical Information Officer

Present.

Judy Sparrow – Office of the National Coordinator – Executive Director

Linda Fischetti?

Linda Fischetti – VHA – Chief Health Informatics Officer

Here.

Judy Sparrow – Office of the National Coordinator – Executive Director

Michael Matthews or Steve Bradley?

Michael Matthews – MedVirginia – CEO

Michael Matthews is here.

Judy Sparrow – Office of the National Coordinator – Executive Director

John Houston? Carol Diamond?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Here.

Judy Sparrow – Office of the National Coordinator – Executive Director

Wes Rishel?

Wes Rishel – Gartner, Inc. – Vice President & Distinguished Analyst

Here.

Judy Sparrow – Office of the National Coordinator – Executive Director

Tim O'Reilly? Mary Jo Deering?

Mary Jo Deering – ONC – Senior Policy Advisor

Here.

Judy Sparrow – Office of the National Coordinator – Executive Director

Mariann Yeager? Elliot Maxwell?

Mariann Yeager – NHIN – Policy and Governance Lead

Mariann, I am here.

Judy Sparrow – Office of the National Coordinator – Executive Director

Did I leave anybody off? All right. I'll turn it over to John Lumpkin.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Thanks for everyone being such troupers. This has been a really intense process. I know all of us have day jobs. Carol, thank you for stepping in during your board meeting. This is our final meeting of this particular portion of our process. I just wanted to remind you that when we're done here today, we have a presentation or I have a presentation on Friday of what we've come up with, with the HIT Policy Committee. As Mary Jo stated, we may at some point after this be asked to make some very specific comments, and we may have a brief phone call periodically. After this recommendation has been mulled over by the department, an NPRM will be issued. This workgroup will be then asked to make comments, including perhaps having a hearing on those proposed rules. That's just to give you an idea of what's pending.

Today we have a group of slides. I think there are about 39 of them. We obviously, in the hour, don't have time to go through every slide, so I'm going to just sort of ask your forbearance, as we try to get on the slides where I think that there are still areas of pertinent discussion. But as I'm rushing through them, please stop me if there is something on the slide that you've looked at where you think that we need to pay attention.

We're going to go to the next slide, which is the workgroup, the slide after that. We're getting in on focusing in on the three areas that are in red, the roles and responsibilities, implementation support, relations among the roles, and just a final clean up on the one in black on the validation role.

The next slide: This is to remind you we're now in the second phase. We have gone from what to who and how. That's where we're going to have our presentation to the HIT Policy Committee.

Actually, you can skip that next slide too to slide number six. Just to remind everyone, we have a definition of the Nationwide Health Information Network, which in the title doesn't have an asterisk, which we usually put on there saying that this is not the official name of the network, which will be determined by ONC sometime this year.

This is the first slide that we would like to focus in on and what is the Nationwide Health Information Network, and I'd like to consider, if there might be a clarification in this first point. I think that while we all agree that it is a preferred option, I wonder if it might clarify it's in an environment of trust and interoperability created by the policy standards and services, which is a preferred option for exchange of health information nationwide.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I much prefer the start of that sentence. I guess I had one clarification on the “preferred option”. What are the other options?

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Which would be, I think the intent of that language of preferred option means that there may be other ways that individuals can exchange information that would not be in that environment of trust and interoperability, but that it is, while ONC cannot mandate participation, they will be responsible for providing incentives to promote people to operate within that environment of trust and interoperability.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I guess I’m struggling with that because if somebody uses the standards and policies for interoperability and trust, they’re not “participating”. They are implementing or complying with the standards and interoperability. Participation has other connotations like it’s a club or something. I guess I’m just really struggling with this being called a preferred option because I don’t necessarily see it as an option if you want to exchange information with interoperability and trust.

John Mattison – Kaiser Permanente – Chief Medical Information Officer

Carol, there are vendors today who have deployment today who are providing end-to-end interoperability services without participating in any national infrastructure efforts.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

That presumably could continue, right?

John Mattison – Kaiser Permanente – Chief Medical Information Officer

You asked what the options were. That would be an option. Correct.

Wes Rishel – Gartner, Inc. – Vice President & Distinguished Analyst

Yes. I think the point, we’ve got two points. One is not to imply that we are somehow able to enforce exchange by another method, and the other is not to imply that using this approach somehow requires that you be a member of a specific group or something like that.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Right.

Wes Rishel – Gartner, Inc. – Vice President & Distinguished Analyst

I’m wondering if the word approach instead of option would take care of that.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Does that work for you, Carol?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes, it definitely improves it. I guess the only issue I would raise is that in situations where information is being shared in a federal grant, in a contract with the federal government, there certainly is, just like virtue of contract, a way to enforce that those standards and policies be adhered to. So I do think there are, and this will come up again in validation. I just don’t want it to sound like there’s no way to actually enforce it. There certainly is in a bulk of the activities we’ve been contemplating.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

How about if that after that period, we put some sort of notation that those entities participating in federal whatever would be required to use this exchange by contract agreement?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes, that they be required to adhere to the standards and policies, right? That could certainly, that certainly should be something that can be done and contractually enforced.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

We're going to substitute approach. I believe that's the word you used, Wes.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I like your beginning of the sentence too, John, the reformulation for trust interoperability.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

So it would start off an environment of trust and interoperability created by policy, standards, and services, which is a preferred approach for exchange. Then we'll have a statement after that noting that the federal government does have authority in certain instances to require participation.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Require compliance.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Compliance, thank you.

Linda Fischetti – VHA – Chief Health Informatics Officer

Yes. Actually, this language related to NW-HIN only being available where they already have a contractual relationship with the federal government, I think is a short-sided view. I think that that's really in affect today and true today, but I see actually this governance activity is what's going to get us past that because HHS and ONC is giving money out to certain entities, but there are a whole bunch of other entities that we, VA, are going to be doing business with, and carrying for patients jointly with. Those folks may or may not receive any federal funding.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes, but presumably you would require those folks to handle information that you're sharing with them securely.

Linda Fischetti – VHA – Chief Health Informatics Officer

Absolutely, and conformant with NW-HIN, but I'm afraid that this language is a bit reflective of the current state of only those who are currently receiving

Wes Rishel – Gartner, Inc. – Vice President & Distinguished Analyst

We're trying to communicate the following, I believe. This is an approach that can and should be widely used. The federal government will use all of the means that it can to insure that it is being used, including making it a condition of contracts, grants, and so forth. But on the one hand, the use of it isn't limited to where the federal government forces it. On the other hand, this is not like saying you have to sign up with a certain vendor or something like that in order to do it. It's an approach rather than a specific technological offering. Now that's an awful lot to say in this little bit of space. I'm worried about all of the things that people worried about before like will this apply to Medicare contractors and things like that? What will it do to the EDI network that I don't know that we want to raise?

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Yes, I don't think we want to get that granular.

Wes Rishel – Gartner, Inc. – Vice President & Distinguished Analyst

Agree, ungranularize it.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Yes. I like the nuance that you added in there that the federal government, that this is a preferred approach, and that the federal government, rather than just HHS, may use incentives and contractual requirements, etc., to promote adoption.

Wes Rishel – Gartner, Inc. – Vice President & Distinguished Analyst

Yes, and maybe you could upgrade promote to insure. Carol, does that get to where you're going?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes. Even specification, that there are all these different mechanisms.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

So I'm just going to remind everybody, including me, to say who you are. Even though those of us on the workgroup are beginning to learn everybody's voices, there are others who may be listening in. I'm going to suggest that rather than trying to wordsmith this, we're going to send out a revised version of this particular phrase, and see if it's going to be close enough to where we all want to go. Any other comments on slide seven?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

When you say revision, are you talking about sort of taking this discussion in the context of all three of these bullets?

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Well, what I'm going to say is that we're going to revise this bullet number one, and that then becomes what we should think about, as we go through the rest of the slides for what it is.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Well, a lot of the language that we just discussed is in the other bullets like the term participation and some of the other things that we've changed, so I just want to make sure that the connotations of some of the words that we raised here in revising that first bullet be carried throughout these three bullets.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

It should be out intent to do that, and to the extent that anyone, Carol, if you've got notes that you can send in by e-mail, recognizing that you're in a busy situation right now, that would help us make sure we don't miss anything.

Mary Jo Deering – ONC – Senior Policy Advisor

Just to be clear, where you see participation there, it's in the context of conditions of participation, and we had a discussion about that, was it, yesterday or Friday. I think the workgroup came back to accept that term as one, which is used, for example, by CMS, and that there was indeed a comfort level using conditions of participation as sort of a term of ours here.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I don't recall that conversation that way. I actually was thinking about the conversation in the context of changing that or the suggestion of changing that term, the conditions of interoperability and trust.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

We did have a conversation where I think we went back. We came back to that language on Monday. We started using conditions of participation. Is there a feeling amongst the workgroup of whether we should say conditions of participation or conditions of interoperability and trust?

Christine Bechtel – National Partnership for Women & Families – VP

I actually like conditions of interoperability and trust better for some of the reasons that we talked about earlier, the challenges of the word participation, including the feeling that it does feel like it's a thing, a network that you're participating in, so I actually think that's a better formulation, and it's also got a more clear, public message that appeals to me from a consumer perspective.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Any other comments? Okay. I think, in thinking through that, that may also avoid some confusion with Medicare conditions of participation, which are a part of a regulatory scheme.

Christine Bechtel – National Partnership for Women & Families – VP

Yes, I agree.

Michael Matthews – MedVirginia – CEO

John, I know you want to put a ball around this and move on, but what we're talking about is a governance structure, and there are entities or things to be governed. To me, a participant is the right language to use when we're talking about being able to identify the who and the what is to be governed. I'm not going to contest moving on and changing the language so that it's satisfactory with everyone. But I think whether we're talking about setting standards and expectations and so forth versus a structure that governs entities, things, participants, we at some point have to define what it is and who it is that we're governing.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

I think we come back to that in a little bit later slide, so if we can hold that thought. Other thoughts on slide seven? When is it considered and when is it not considered conditions of interoperability and trust? There are no more comments on that. If we can move ahead to slide number eight, and I knew we were going to get to that. Who is part of this? Any participant, and this is language that we've sort of been migrating to, describing what an entity is, an implementation group, and an exchange community.

For those of you who have the slides with you, if you would take a look at slide number 37, if we could jump ahead to slide number 37. Here's the conceptual model, and that is that it recognizes that there may be different levels of engagement in the health information network, depending upon individual circumstances and business practices. What we're trying to do is accommodate that, so now if we can go back to slide eight.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Are we going to come back to this on validation, or do you want comments now on 37?

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

We'll come back to that on validation. On slide eight, any comments on who is part of it?

Michael Matthews – MedVirginia – CEO

I have a comment on that. I appreciate the inclusion of a term that I believe I introduced, the implementation group. But the way this thing is laid out, it implies some kind of hierarchy that I don't think is applicable to what we're talking about where you— I never saw exchange community as being multiple implementation groups. To me, the exchange community was a term that was basically interchangeable with an implementation group, and somebody has got to explain to me how we go from entity to implementation group to exchange because that's, to me, a new concept that we haven't fully discussed or vetted.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I agree. I'm thoroughly confused by it.

Mary Jo Deering – ONC – Senior Policy Advisor

I think that the reason why it's in red, and we even said maybe we should take it out, this was staff's best effort to capture what we heard. I know that there was not really an intension to imply a hierarchy, but as this was discussed, the workgroup was, at one point, using implementation group and exchange community sort of interchangeably. But there was also the sense that there are different types of subgroups that might need to be separately distinguished, so I think this was why we made this up. By the way, under any circumstances, it wasn't meant to be a prescriptive definition, simply an attempt to be empirical, as opposed to prescriptive, just trying to capture what is.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I think, Mary Jo, for me, I just don't—maybe others understand what this is, but I don't get it.

Mary Jo Deering – ONC – Senior Policy Advisor

Would just putting two and three together? I think it was pretty important to the workgroup. I mean, we're happy to just strip it out right now, but it was especially important to the workgroup to get down to the concept that, yes, a large or small entity could be one of the things, which is recognized. It could be these different kinds of groups. It could be a vendor. It could be people who are exchanging through some of these other different models.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Just say a large or small entity or a group of them. I don't think we need the new terminology. This is confusing enough as it is.

John Mattison – Kaiser Permanente – Chief Medical Information Officer

Right. I was going to say essentially the same thing. What I would consider is a participant can be any entity, large or small, or any aggregation of entities, large or small, public or private.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

I like that. Anybody have a problem with that wording? That fixes who. Any comments on why?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes, I suggest striking the term "NHIN way". It's a source of, I think, it's going to be a source of misinterpretation.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

How about we go back to that ... which I proposed before that would exchanging information in an environment of trust and interoperability created by policy, standards, and services?

John Mattison – Kaiser Permanente – Chief Medical Information Officer

Or you could say—

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

You could.

John Mattison – Kaiser Permanente – Chief Medical Information Officer

You could say, exchanging information using NHIN interoperability standards: security, trust, etc.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I thought yours was elegant, John, but I think the general message is the same.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Okay.

John Mattison – Kaiser Permanente – Chief Medical Information Officer

Either way. Either way.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Okay.

Michael Matthews – MedVirginia – CEO

I want to make sure there's a distinction drawn between adherence to the standards of privacy and so

forth and actually being part of the NW-HIN infrastructure. Someone independently could go out and implement the Connect gateway, specs, etc., and still not be part of NW-HIN.

John Mattison – Kaiser Permanente – Chief Medical Information Officer

That's precisely why I added the NW-HIN standard security, etc.

Michael Matthews – MedVirginia – CEO

Yes.

John Mattison – Kaiser Permanente – Chief Medical Information Officer

I agree, Michael.

Michael Matthews – MedVirginia – CEO

I hear you. I'm putting an exclamation point behind it.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

The other issue I want to raise here, and I really don't remember this explicit discussion, but this assumption here of a trusted seal of approval. I guess I'm just wondering what that is and what would be done in order to earn it. I want to make sure we're not erecting barriers to participation that may or may not be effective. I guess I just want to understand whether either the staff or the workgroup has looked at the best way to affect this objective and decided that it's a seal of approval.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

What we have discussed is that—and later on is that there will be a validation process, and that when I gave the presentation, which I think everyone saw through the HIT PC and used the term, this validation would enable someone to say that they participation. That's what that term really applies to, so it's use of some verification of validation.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes, so I'm not disputing the element of validation in governance. What I am questioning is whether we feel, one, we have done sufficient analysis of what that would mean, what requirements and process that would engender, what the burden of that would be, and whether that is the most effective way to implement a validation mechanism. That's one group of questions. The other question I have is, my—

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Yes, but Carol, if I could pin you down, I think we're kind of at the decision point. Do you believe? You're raising these questions, but we've had these conversations.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes. I'm not confident, and that's why I'm raising it. I'm not confident that that's the best way to achieve validation. I guess I would want to have more input on how this could be implemented and what the implications might be so that we could be sure we understood what we were recommending, what it would look like to people who want to exchange information using these standards and policies, and that we've done our homework in terms of making sure that it is as effective and also as low burden as possible.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Do you have an alternative recommendation?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

My recommendation would be, I don't see in the statute where by Friday, we have to say exactly the process for validation. My recommendation would be to say validation is a required element of governance. We think there are multiple ways to achieve validation, including contractual enforcement, grant requirements, other sort of oversight mechanisms, and that we should undertake the process of

getting further analysis and more input on what it would mean because this one really does have, I think, implications for participation. I just want to make sure that we don't create layers here that may not fully achieve the objectives we have. Seals of approval, as you know, in other sectors don't always work.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Carol, I'm going to push back because probably six weeks or so before we pushed, before we gave our recommendations at the HIT PC on October 20th, we listed criteria for validation. We listed that there needed to be a mechanism to verify that an entity essentially was following the policies, the standards, and that were consistent with the concepts of the health information network.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

But I don't dispute that.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

But what I hear you saying is that we don't want to make a recommendation that there be something that carries out that validation role.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

No, I'm saying that there are multiple ways to carry out that validation role, and I'm not convinced that a seal of approval is the only or best way. Others may be, but seals of approval have not always worked. Before we say that is the mechanism to carry out the validation role, I'd like to be more—

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

I don't think we are saying that. There's nothing in there that says that a seal of approval is a validation role. It is what you get after you've been validated.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

It says that it's evidenced by the use of a trusted seal of approval. So my understanding is, if what we're saying is the seal of approval is the mechanism through which validation is accomplished and demonstrated.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Does anyone else see this in what we've recommended that the seal of approval is the validation mechanism?

Christine Bechtel – National Partnership for Women & Families – VP

Carol, what slide is that phrase on?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

It's the second bullet in eight.

Christine Bechtel – National Partnership for Women & Families – VP

I was down on 37 somehow. Can we work on the language here because I think Carol is raising a point, which is, it's easy to perceive that that is the mechanism? Maybe rather than taking a vote on whether this language stays or goes, we could just change the language to clarify that because that might be one option, but it should be one of many, right?

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

What we were saying is evidenced by, as evidenced by validation?

Christine Bechtel – National Partnership for Women & Families – VP

I think part of the problem is you have a bunch of "ands" in there or maybe you're just missing some conjunction, or you need a "for example" or something like that because I think there is a lot of controversy around that particular approach we thought in certification too, and we have talked a lot about

condition of federal contract or other kind of incentive money, grants, etc. So I think there's probably a fairly robust list, and a seal may be one. I don't know, but I think clarifying the language might be helpful here.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Right. Let's drop the language, the use of a trusted seal. But in our construct it would say, adherence to standard privacy, security, and interoperability, evidenced by the validation process.

Christine Bechtel – National Partnership for Women & Families – VP

Great.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Great.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

That does it?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Okay. Thank you. Are we done with any other comments on slide eight? I'm willing to move on to slide number 13. Again, because we've seen all these slides, we've gone over them, we haven't had any comments. So if you have any comments before slide 13, stop me. Okay.

Mary Jo Deering – ONC – Senior Policy Advisor

John, just for clarification, slide 13 and 14 were presented back on the 20th of October. They're listed under the category of phase one recommendations that have already been put out.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Okay, so we really don't need to do those then. Let's go to the phase two findings and focus in on – let's just start walking through on 16, 17, and I'm just going to walk through them. Please stop if you have comments on any of these slides. The next slide, 19, 20, this is where we identify the gaps, 21, going to the recommendations, 22, general recommendations.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Just on 20, again, I'm assuming the prior changes we made to terminology will be carried through, like we're back here to some of the old terminology.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Yes, on the COPs. Yes.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Okay, 23: So when we pulled everything together, we seemed to have one—well, the general recommendations, we have the nine principles, general recommendations, and then we have in order for it to be successful, there must be strong federal leadership to support engagement in the health information network. Any other general recommendations?

Mary Jo Deering – ONC – Senior Policy Advisor

John, again, ultimately, there were the three general recommendations back on slide 13 that the group had already said, which I think are equally pertinent here. It's just that this is one additional overarching recommendation that was specifically raised during this phase.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Okay, so this is the additional recommendation.

Mary Jo Deering – ONC – Senior Policy Advisor

To slide 13 really.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Which slide are you talking about now, 23?

Mary Jo Deering – ONC – Senior Policy Advisor

Yes.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Twenty-three essentially gets added to slide 13, which was our first phase recommendation.

Mary Jo Deering – ONC – Senior Policy Advisor

The general level.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes. Okay.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Let's go to 24: This is where we then moved into three areas that we wanted to focus our recommendations on, again with the changes on COP.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes. The one thing that jumps out at me here is this term eligibility. It's got the same connotation as some of the other terms we struck. I think verifying compliance and implementation is good, but eligibility has connotations I think we want to try to avoid.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Mary Jo, help me, remind me who wanted that in.

Mary Jo Deering – ONC – Senior Policy Advisor

Mariann, are you in a position to talk? She's in a car traveling.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

It could be determine eligibility for federal, if we qualify it. I just don't want to sound like determined eligibility for the—participating in some noun of a network.

Mariann Yeager – NHIN – Policy and Governance Lead

I think, just to clarify, just from a historical perspective where the workgroup had discussed this, there were several workgroup members that had raised the importance of, in addition to the policy for trust and interoperability, that there may also be circumstances where it's important to clarify to whom those requirements would apply. It's not just the parameters around federal contracts or federally based incentives, but even explaining sort of the conditions under which those elements would apply. They were coined as eligibility criteria. I think it was John Houston. Several members felt really strongly about it, and so the concept was added.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Can you give me an example?

Mariann Yeager – NHIN – Policy and Governance Lead

I think it was sort of ... a way, I mean, I'm going back a couple weeks now. I would say maybe even it could be specifying that

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes, what is the subject here? Eligible for what?

Mariann Yeager – NHIN – Policy and Governance Lead

To say eligibility criteria to clarify maybe the conditions or circumstances when the criteria apply, so maybe it's clarifying the functions. I'm a little fuzzy on it right now just because I haven't looked at it recently, but while we're talking, I can go back and look.

Michael Matthews – MedVirginia – CEO

I'm happy to weigh in on this one. I advocated for eligibility to be one of the criteria. We're not talking about governance over health information exchange. We're talking about governance of NW-HIN, and to have things to be governed, you have to know who it is that's to be governed. To know who it is that gets to be governed or who then will become governed by this entity, we have to have the eligibility. I don't understand where the disconnect is on this one. By definition, if you're going to govern, you have the governed. To me, the eligibility is deciding who it is that's to be governed.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

We already had a slide saying who it is that's going to be governed. I'm wondering, based on that statement, what is the determination that needs to be made?

Michael Matthews – MedVirginia – CEO

To whom it applies. Let's take exchange. Exchange is one of the entities that then would be deemed as being eligibility. Some kind of eligibility criteria of NW-HIN is exchange to be part of NW-HIN. Is it to be an implementation group or exchange community? I think we still need to get that nailed down, but if it's to be an exchange community, then we, as an exchange, would have to meet some set of criteria. There could be other communities, exchange communities, that aren't eligible to be participants in the NW-HIN, so what those criteria are is all that I'm seeing here, and perhaps every exchange or exchange like community might need the eligibility criteria. But if you're going to have a governing body, but can't determine who it is that's going to participate.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Shouldn't anyone who implements the standards and policies?

Michael Matthews – MedVirginia – CEO

No, I don't see it that way, but I'm happy to entertain other thoughts.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I guess I'm wondering why not.

Mariann Yeager – NHIN – Policy and Governance Lead

It could be that there are different roles in the exchange that need to be acknowledged. So maybe it's not so much a notion of who is in, who is out, but to whom and where and where do these conditions of trust and interoperability apply because they may in fact apply to parties differently. So it's as much applicability as much as eligibility, and it could be eligibility to the extent that point to the incentives that in order to be eligible for these incentives for NW-HIN, then you must satisfy XXX. I think

Mary Jo Deering – ONC – Senior Policy Advisor

I think I'm now also recalling where this came from, and I think the word applicability is very good because I think that, in some ways, there's violent agreement here in that this is to whom does this apply, and could it be that we would say define the applicability of. I know we're going to change the conditions of participation, but for now, let me just say COPs. Define categories of applicability of COPs.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes. I think that's much, without the COP, I think that's much better. I want to avoid connotations that make it sound like this is something you subscribe to.

Mary Jo Deering – ONC – Senior Policy Advisor

So instead of ... it would be describe is also a less harsh term perhaps. Describe the applicability or something.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I think that's great.

Elliot Maxwell – ONC – Expert Contractor for Health IT

I just have one question to Carol or maybe a comment to the question that Carol asked, which is whether anybody who complied is considered to be part of this activity. I think the answer that was made through a number of discussions of the working group was that people could comply and not hold themselves out as being participants. That took them out of coverage of the governance function because these were open standards and open policies, and one could comply with all of them and still say, I don't hold myself out as doing these things and, therefore, being liable for the failure if I in fact don't comply. So it's not

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I think we're stuck really splitting hairs. I don't know why we would need

Elliot Maxwell – ONC – Expert Contractor for Health IT

I don't think it's splitting hairs at all because it's the basis, in some ways, of any form of enforcement ala the FTC's notion of enforcement. It's the holding out. If someone complies as a voluntary action and simply complies and does nothing more than that, are you saying that they would then be subject to ... validation, or enforcement options and on what grounds?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Well, first of all, if they comply, I'm assuming you mean they've been validated. Presumably, if they had been validated, there's a level of "liability" associated with that. I don't know that it's a question of holding themselves out. Again, I'm nervous about things that sound like there's a bar that has to be wagered above compliance with the rules that protect information, privacy and security, and the standards that meet interoperability. If those are validated, and somebody says they've been or is validated to be implementing them, I guess I'm left wondering.

Mary Jo Deering – ONC – Senior Policy Advisor

In the interest of time, I would point out that when we get to slide 29 about what we have been calling conditions of participation, which we'll change, ONC is supposed to set out not only the universally required set, but those that apply in particular circumstances.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes, and I think applicability, Mary Jo, is spot on.

Mary Jo Deering – ONC – Senior Policy Advisor

Yes, so what I'm proposing is especially for the level of the workgroup's recommendations right now. If we go with the suggested language for now, keep it simple. We hear all the issues have been put on the table, and ONC can take those under advisement when we get down to actually getting into the details of it.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Can you read that language again?

Mary Jo Deering – ONC – Senior Policy Advisor

Describe the applicability of, and I'm going to use the shorthand just for now, of COPs to diverse situations or exchange scenarios.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Good.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Any other comments? Let's go on. Any other comments on slide 24? Let's go on slide 25. Anything there? Twenty-six? The new language on seek consensus, I saw a note from Carol wondering. I'm not sure that we— I think, Carol, you raised the issue, do we want to shackle ourselves to consensus at this point?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes, especially because I think we're still a little fuzzy on exactly what these responsibilities will be. They may not all require consensus. For instance, if it's clarification of a particular set of requirements or guidance or what have you, I just don't—consensus is a high bar for anything, and I wouldn't just use it liberally.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Anybody want to keep it in? So this thing would need to have a decision-making process, just not necessarily consensus. Okay.

Michael Matthews – MedVirginia – CEO

John, I don't have a problem on that one, if you're ready to move on, but let me just stop and check to see if anybody had any other questions. I do want to make a point on the title of the function.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Okay.

Michael Matthews – MedVirginia – CEO

We started out with this being a coordination function of governance, and then it went to operations and implementation. Then operations was stripped out, and so now we have implementation. I do not think operations and implementation are governance functions. I think coordination is. I think that I've made this point, and I'll just keep making it until we get through Friday. I think it's the governance role to make sure that implementation processes are in place and operational support structures are in place, but not to implement and not to operate. I still see the same kind of language creating back up in here, and I just don't think that there is an appropriate fit for that in a governance structure set of recommendations.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I actually agree with that, but here's why I think it's here, and maybe we can figure out a way to address it. Many of the "gaps" that were raised earlier were not actually issues of governance. They were issues of who is going to clarify the questions that might come forward about particular policy issues. Who is going to write the clarifying specifications on things? Who is going to support people who are implementing and have very directed needs for support in that implementation? I think your language of having a mechanism for implementation is a good one. I don't think the way it's structured here implies it is a function of governance. And we should work to clarify that.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

How about coordination of operational and implementation?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

That's good.

Michael Matthews – MedVirginia – CEO

John, I know we're getting bogged down here. I'm happy. I think my point has been heard, so taking Carol's comment and then having maybe Mary Jo do some wordsmithing on that, I'd be satisfied with that. But coordination of operations and implementation is still now what I thought we were originally talking about, which was coordination across HIE activities like coordination across exchange communities. Again, the example that was used early on is direct and exchange were not coordinated, and there ought to be this higher level conversation going on by an overall governance authority that would say, how can we leverage and optimize both, have some synergy there rather than suboptimized by perhaps having programs that could potentially be in conflict with one another. That's what I thought we were talking about.

Mary Jo Deering – ONC – Senior Policy Advisor

I wanted to say that I recall that there was indeed surprising agreement on what needed to be done on this level, and it was the name that was hard. So, with your permission, I would like to just ask, do we think we all agree on, and maybe we would need to jump ahead to slide—I hate to take you out of sequence, John. This would be 33—slide 33, because if we can agree on what's on slide 33, then we can figure out what to call it later.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Okay. Remembering again that the COPs will be COIT.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

What's a COIT?

Mary Jo Deering – ONC – Senior Policy Advisor

Conditions of interoperability and trust.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Are we in agreement on what's on slide 33, except for the title?

Christine Bechtel – National Partnership for Women & Families – VP

John, I missed the last call, so the last knowledge that I had was folks talking about sort of a FACA versus a private entity, but I now don't know to which role that applied.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Well, we kind of worked down to that of this particular one that it would not be a FACA.

Christine Bechtel – National Partnership for Women & Families – VP

Okay, so that was specific to this role?

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Yes.

Christine Bechtel – National Partnership for Women & Families – VP

Implementation support. Okay. That's helpful.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

If we are in agreement on this, then we will figure out what to call it. For right now, let's call it the middle role. Let's go back to slide number

Christine Bechtel – National Partnership for Women & Families – VP

John, can we not leave 33 for a second? I just am not sure. This new, the first sub-bullet in red, so how would that work? What other additional requirements are envisioned that they would monitor?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes, and who is creating them?

Christine Bechtel – National Partnership for Women & Families – VP

Right.

Mary Jo Deering – ONC – Senior Policy Advisor

There was a slide there. I'm sorry. This does get hard, doesn't it? It's slide 31 where there was this question about when it actually fell at the bottom of slide 29 that it's one thing to establish these COITs. It's another thing to recognize that in the real world there may be entities of groups of entities that are establishing something above and beyond or specifying it in a little bit different way because that's the way they agree among themselves they want to do it. What was left dangling is what, if anything, we cared about that. So slide number 31 was an attempt to tee up the fact that people, these entities are probably going to do this, and should we be monitoring them? Should we be trying to impose any kind of oversight?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I thought we had some of this discussion in the context of standards and decided that where people chose to go above and beyond the required standards for interoperability, or where they might innovate on top of those basic standards, that we didn't want to create bottlenecks.

Mary Jo Deering – ONC – Senior Policy Advisor

Exactly. You're exactly right, but should they, but there was also this concern that what if or did anybody need to monitor the to make sure that they didn't have a negative impact either on competition or on actual exchange.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

What we are looking at here is saying, okay, so if this group of folks wants to do that, what would create a bottleneck is if they had to get approval. But this says that it's recognized that something that they may do may actually impede competition or create barriers to other groups who are engaged in exchange. So the governance function would be that someone would be monitoring it. If it's determined that it creates a problem, at that point the governance mechanism needs to be aware of it and take action. But in most instances, they would monitor and say it has no impact, and nothing would be done.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Well, then there are way too many words on this slide because presumably the conditions for interoperability would obviate that, and I'm actually really uncomfortable with the idea that there wouldn't be requirements or policies for some of the things that are mentioned in this slide, and that groups would have to, for instance, for sensitive data, be relied on to come up with those on their own. I would think that if there's a need to access sensitive data, that would become part of the policy requirements. So if we could shorten this to just very simply address the issue in some way in terms of monitoring or a mechanism for redress or whatever, I think that would be much better than all of this text because I didn't get that from this text.

Mary Jo Deering – ONC – Senior Policy Advisor

I think that's basically the first bullet though, largely, and it's....

Mariann Yeager – NHIN – Policy and Governance Lead

I just wanted to add one other example ... see if it makes any difference or not ... could apply. Say for instance ... conditions of operability and trust is that maybe around privacy, policy ... example that uses

... information should comply with applicable law such as HIPAA, and then there may be a group of folks get together. They want to be able to build a constraint or ... that condition. Is that still a NW-HIN, or is it—and there could be a whole myriad of areas where they feel they need to make ... after they need to actually apply that condition or conditions to their particular exchange model. To what extent is it still in alignment with NW-HIN, and should there be a mechanism to address instances where there could be ... or unintended consequences? Just an example.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

But shouldn't that be snuffed out in whatever the validation mechanism is? In other words, why is that a separate process?

Mariann Yeager – NHIN – Policy and Governance Lead

I think because ... have their own governance process and decision-making where they're possibly ... environment making these adjustments on the fly ... scope, so to speak.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

I'm going to try to pull us back to looking at slide 33. Carol raised ... that she kind of agrees with what I laid out as being what this function should be in the first bullet point in red. Her comment is that it doesn't say that to her. If we maybe can reword that so it says specifically that monitor— How about this, that monitor innovation within exchange.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Monitor implementation really, right?

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Monitor implementation to assure that it does not negatively impact other implementation groups, impede competition, or create barriers.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

That's fine, I guess. I guess this raises the question of who is the entity that's monitoring the other entities. I don't know if monitor—I don't want to create a validation function in this entity. Getting input, surveying how people are implementing, raising those examples is all good, but I don't think this entity should be responsible for validation necessarily.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

I think that's why we have a different recommendation on validation.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes. Exactly, so I think this starts to cross the line a little bit if the language is not clear.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

What we need to do is to come up with some language, which I don't think we will at this moment, but basically saying that the role of this entity would be to monitor implementation to identify.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

The two sub-bullets are probably good.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Right. Okay.

Christine Bechtel – National Partnership for Women & Families – VP

John, I just want to say, as we're working through the language, that what my concern was, just so that staff can sort of be cognizant of it as we go through the process, which is, if we were recommending the creation of a nongovernmental entity that in effect would have the ability, not just to look at the technical

capacity, but really the policies, particularly around trust of these entities, and make decisions about, to some extent, their consistency with goals, but sort of the notion of. I know we're going to get rid of the language, monitoring additional policies and making decisions about essentially the validity of those policies. That begins to come back for me and, I think, for the most of the consumer community, to the federal role. So really the kinds of—

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I agree with that.

Christine Bechtel – National Partnership for Women & Families – VP

Yes, the kinds of duties that relate to policy that are de facto policymaking or setting decisions, I wanted to be very clear that, for the consumer community, I think, to support this, there has to be a very bright line between the governmental and nongovernmental agencies, and that's a role that we really think needs to be with the federal government.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

How about this? How about if we put a third bullet underneath there that would specifically say that, that where those have been identified, recommendations will be made to back up to the federal authority?

Christine Bechtel – National Partnership for Women & Families – VP

Yes, I think that's good because it is good to have somebody flagging things from the field, but they need to go forward for policy decisions by different entities.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

They should also not be resolving disputes, so I would get rid of that bullet.

Christine Bechtel – National Partnership for Women & Families – VP

For the same reason, right, Carol?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes.

Christine Bechtel – National Partnership for Women & Families – VP

Yes, I agree.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Could we say identify disputes over COPs and make recommendations to the ONC?

Mary Jo Deering – ONC – Senior Policy Advisor

I think that there may be an issue here that I'm not going to be able to articulate about whether the federal government will actually try to actively resolve disputes among individual exchange partners. I can't recall where this came from, but I think we might need to take under advisement whether the federal government believes it should be resolving disputes down at that level.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes. Mary Jo, I don't think it necessarily means it's either here or in the federal government. There are other mechanisms to resolve disputes, and they could include mechanisms that parties agree to in interacting with each other.

Mary Jo Deering – ONC – Senior Policy Advisor

So this is provide a process. It doesn't actually say that they should resolve them, the way it currently reads, but does that still sound too active?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

To me it does. Dispute resolution is definitely an element of governance, and we should think about, in the context of all three of these buckets, quite frankly, that belong.

Mary Jo Deering – ONC – Senior Policy Advisor

Again, I think that this had partly to do with the sense of devolution.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes, I understand.

Mary Jo Deering – ONC – Senior Policy Advisor

In that they actually wanted, as much as possible, to keep this down in the community and among the stakeholders before it got escalated.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes, but I think this implies that this is the arbiter of whether or not the implementation has happened to a satisfactory level and that if it is not, it is the entity that's empowered to decide whether and what needs to be done about it, and I'm not sure

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Carol, can we perhaps put a qualifier on that that says, a disclaimer that says this does not mean that this entity will be the resolver of those disputes?

Michael Matthews – MedVirginia – CEO

Before Carol answers, again, I go back to any governing entity has to have some basic authority for enforcement of the rules, for determining eligibility, for being able to resolve the disputes. It seems like we're just going backwards on some of this conversation about what are some of the requirements. I look back at some of the principles that we started out with. Again, we're not setting the conditions for HIE to flourish across the country. We're trying to establish within the purview of the NW-HIN governing structure what are the authorities of the things that it shall ever see. And if there are things occurring outside of it, then it has no particular bearing, relevance, responsibility over that. This is where I've just got a big disconnect with the conversation. I don't see how one can govern if you can't enforce the rules, you can't determine eligibility, and you can't resolve disputes amongst your members.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I guess that's the disconnect, isn't it, because I don't know that we see this as a membership or a subscription. I think there is a need to really think about where these functions belong. I absolutely agree that resolving disputes is a very important element of governance. But where it happens and who is empowered to do it has a lot to do with the structure that's in place. Right now, I don't have a good feel for what this structure even is, let alone if it is the structure to do all of the things we are imparting on it.

John Mattison – Kaiser Permanente – Chief Medical Information Officer

What I'd like to suggest is that given our principle of devolution that dispute resolution is often best done by a jury of peers, if you will, and that would be other participants. So I think that, to Michael's point, if we don't have a lever and any influence over any particular entity that's exchanging, then there's no relevance of dispute resolution. But if there is a lever of whatever sort to have that oversight, the principle of devolution would suggest that it is a group of peer participants that would best constitute any such dispute resolution board.

Mary Jo Deering – ONC – Senior Policy Advisor

I think that perhaps staff— Here's what I'm going to suggest without knowing the exact words yet. I am hearing support for the principle of devolution, and that there are a variety of ways, and that disputes need to be resolved. I think I am hearing that there is a role for this entity, whatever it is. However, I think the only single disconnect is whether it individually, actively makes the decisions in a dispute.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

And what the nature of the disputes that it resolves are, I don't even think we've established that.

Mary Jo Deering – ONC – Senior Policy Advisor

Right, but I think that I am hearing that there should be something in there about its role as a stakeholder group. I'm hearing that it doesn't really drop off the plate somehow, but that we have to work on the wording, and I'm saying, maybe in the interest of time, staff can do their best to try to put something down there. Unless anybody has a perfect statement for it, I'm happy to do that. But I'm also happy to try and take it on after the call. But, John, you said something about this doesn't imply something.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Yes, I think we've got some disagreements. I haven't heard any recommendations. We've got three buckets, so here are our choices. We've got the federal bucket. We've got the coordination implementation operations support role that we don't know quite what to call. Then we've got the validation process bucket, so those are the three buckets that we're looking at governance occurring in. The question is, if it's not here, where should it be?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I was actually going to say, on some level, and this is the point I tried to make earlier, it belongs in all three. In other words, it is an element of governance, and you could imagine disputes of different flavors arising in each of these three functions.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Okay. So then that would move it back to slide number 23.

Alison Gary – Altarum Institute – Communication Technologies Coordinator

I hate to interrupt. I just wanted to let you know that we only reserved our telecom and captioning until 5:30, so we have a hard stop at 6:00 p.m.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Can we pull that out and make it as a general recommendation that dispute resolution needs to occur at all levels? Any disagreement with that?

Mary Jo Deering – ONC – Senior Policy Advisor

John, actually that is very much in keeping with the little bitty asterisk on the bottom of slide 24, which says that there are a variety of approaches for implementation and validation, and we already say that accountability, oversight, and enforcement are built into the processes, plural. So I think this notion of a plurality of locations is certainly, was already established.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Okay. So let's make sure it's clearly addressed, the issue of the process of dispute resolution. Okay. Any other comments on slide 33, because as you've heard, we've only got 16 minutes, and then we get cut off, and we need to reserve a few minutes at the end in case there are public comments.

Michael Matthews – MedVirginia – CEO

I have two specific comments, one on 33 and one on 31. On 33, the second red bullet, provide objective and authoritative guidance on implementation of COPs, I would like for staff to take into consideration my earlier comment about implementation and to be inclusive of any kind of an accommodation of language. I do not believe an implementation ... ought to be interpreting the COPs and giving that kind of guidance. I'm going to leave that with staff.

On 31, I think the e.g. on the first bullet point, e.g. exchange, national hospital IDN networks, we've already talked some about implementation groups and exchange communities. The hierarchy I've got a

problem with. But under the e.g., I don't believe that e.g. needs to be there. I think it's just going to confuse things. It's opening up for interpretation what these things are, how these things are, and so forth. If we've talked about the definition of implementation groups/exchange communities, that's where, if we're going to have any examples, it ought to be there, not on this particular one. To me, it's just confusing things, and I'll leave it at that. Thanks.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Other comments? I'm going to suggest that given that where we are at time that there are a couple of things where there's some remaining questions that we have, and that, well, I think we were at slide 20. Let's go to slide 29 and continue to walk through. If you've got notes on there, you want to stop, please stop. We're going to go to 30, 31, open questions on slide number 31. I'm going to suggest that we just put these in a ... that are issues that we haven't resolved, unless there's some disagreement with that.

W

I just want to point out that one of the items that's listed here as an open issue, the group actually did in fact address. I think it was on one of the earlier slides and ... condition to participation. So we'll just remove any redundant questions.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Great. Slide 32, the federal role ... 34.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Again, the same recommendation on 32, the word of promote. I think Wes has suggested earlier, coordinate and establish incentives to insure.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Okay, so the second sub-bullet under the first bullet.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes. Again, it's a change that was made earlier. I'm sure staff will catch this.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Anything else in this slide 32? Thirty-three, we've just spent some time on. Thirty-four? Okay.

Christine Bechtel – National Partnership for Women & Families – VP

Thirty-four has a big question on it, right?

Mary Jo Deering – ONC – Senior Policy Advisor

Yes. Actually, I think that perhaps we've actually heard the workgroup speak to this. I mean, this basically says, does the federal government set the specific criteria, and then this validation will implement them, or are we delegating the ability to actually develop the criteria to this entity? I think I've heard the former that you believed it was a federal role, but we really do need to be sure of your intent here.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes, it's also necessary for it to be that if there's any assurance of even processes in validation. In other words, if the criteria are not set and common, then you can't be assured the different entities performing different elements potentially of the validation are doing so consistently.

Mary Jo Deering – ONC – Senior Policy Advisor

So you are saying it's a federal role.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes, and that's really the way it works with certification as well.

Mary Jo Deering – ONC – Senior Policy Advisor

Yes.

Christine Bechtel – National Partnership for Women & Families – VP

If you didn't guess by my earlier comments, I also think it's a federal role.

Mary Jo Deering – ONC – Senior Policy Advisor

Good.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Does anyone disagree with that? Okay. Anything else on 34? Let's go on to then 35.

Mary Jo Deering – ONC – Senior Policy Advisor

And I have only one note that in a way 35 should in principle been rolled up into 34, but there's just too much text there, and so certainly we have flagged in our note there one of the specific issues.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

On 35, again, this brand issue, I don't know. I feel like that has the same connotation as participation and eligibility, and I think we want compliance and enforcement of the policies, but brand has other meanings to people, and I'm worried that it will create the wrong message.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Carol, I hear you. Now I'm trying to struggle with, if I'm in Poughkeepsie, and I want to exchange with somebody in Paducah, Kentucky, how do I know that they are participating in the same environment of trust and interoperability?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Because there is a validation and enforcement mechanism for those conditions, but it should not be about the brand or the connotation of the term brand. I'm worried that it implies certain technologies or certain subscriptions, and I would just steer away from things that could be interpreted that way because I don't think that's our intent.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Okay. They have some evidence of validation, but their sensitivity to using the term brand is being that they've Okay. Anybody else feel strongly on that issue?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Also, preconditions, I would get rid of that also. Again, for the same reason, there should be entities to verify that the standards and policies, as established by ONC, are met for NW-HIN.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Verify the applicable conditions for participation established by ONC are met.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Applicable conditions established by ONC are met. Again, participation, preconditions, brands, I'm worried about the flavor of that. I think what we care about is that the standards and policies are implemented and enforced and that there's a way to validate that they have been.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Do you believe that if someone is going to use exchange in the environment of trust and interoperability that we're calling the HIN, do you think that validation is a precondition for doing that?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

A precondition?

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

In other words, if you can't validate it, you can't play.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Well, what if it's with a partner with whom I already have an established relationship?

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Then if they're not validated, then that's not a HIN exchange.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

No. What if, with that partner, I have already implemented those policies and standards, and we have been, let's say, trading partners for some time? Again, I think, if we get away from the term of the brand implementation and get back to the enforcement of the policies and the validation of those policies, we don't have this issue.

Michael Matthews – MedVirginia – CEO

I think we do have the issue because it's not that entity who has a partner with the entity having validated that partner. Then the partner is not subject to the governance of the governing entity here. They're subjected to whatever that party is. So that other party is going to be ... and will be part of NW-HIN, it needs to be subject to the governance of NW-HIN, not a partner of NW-HIN.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Yes. I think, if you take out precondition, and you essentially invalidate....

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Well then let's just not have it as a precondition. Can we make it a condition and then take out the brand?

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Sure. Anybody opposed to that? Anything else on this slide? The next slide, let's just

John Mattison – Kaiser Permanente – Chief Medical Information Officer

I'm sorry, John. Before you go on, I just got off of a conflicting call. My question is, did we resolve the issue around digital credentials or no?

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

We did not get to them, and let's have a side conversation on that one.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

That's also something a tiger team, I think, is working on as well.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Right, and what the tiger team said basically was, at least in my call with the chairs, is that that may be one of the validation criteria, but it wouldn't be something that would be part of our recommendations. I think we kind of worked that out. We've got four minutes left. Let's just take a peek at slide number 36. I think that we've already addressed this.

Mary Jo Deering – ONC – Senior Policy Advisor

I think we had language that said entities large and small and aggregations and entities large and small.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Right.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Yes.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Slide 37 then, and then slide 38. Carol, did you have a question on these two slides that wouldn't be fixed if we applied what we've talked about before?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I don't think so other than I wanted some way to connote that all of the enforcement of NHIN policies and standards didn't necessarily fall only on a validation entity's ability to verify, whatever that process may be. That some of those enforcement capabilities actually can also rest, as we've discussed, with conditions for incentives or government or what have you. So I don't want enforcement to appear to have some hierarchical relationship here.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

With that, I think we need to take public comments.

Judy Sparrow – Office of the National Coordinator – Executive Director

Yes.

Christine Bechtel – National Partnership for Women & Families – VP

John, I do have a quick question that just I can flag it for staff on slide 38 under implementation.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Yes. Just so you know, at the same time we're asking for public comment, let's take this other comment. Go ahead.

Christine Bechtel – National Partnership for Women & Families – VP

Do you want the operator to make the announcement?

Judy Sparrow – Office of the National Coordinator – Executive Director

Yes.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Yes, please.

Judy Sparrow – Office of the National Coordinator – Executive Director

Operator, could you please ...?

Christine Bechtel – National Partnership for Women & Families – VP

The box that says facilitate broad stakeholder input, including consumers and providers to ONC. I think it would be helpful to clarify what that input is regarding since, on the left side, you have ONC with advice from FACA as being a broad stakeholder input, and in some ways, and in many ways a much broader stakeholder input than a private, total private entity. So I'm not sure what the facilitating a broad stakeholder input is over there, and I think it should be clarified.

Mary Jo Deering – ONC – Senior Policy Advisor

We do have that on another slide, Christine. I think it was one where we agreed with one of the sub-bullets. So I'll flag that for you and send it to you in e-mail. You can see whether that makes sense to you.

Christine Bechtel – National Partnership for Women & Families – VP

I'll dig through it again.

Mary Jo Deering – ONC – Senior Policy Advisor

It's actually slide 33.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Any public ...?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I was also going to say, I don't know about public/private collaborator. On another slide, I thought we used the term nongovernmental organization, an NGO, which is also a term of Art's.

Mary Jo Deering – ONC – Senior Policy Advisor

Which do you prefer?

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

I think NGO is a more widely understood term. I don't know that we have sorted through its structure or all of its functions.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Are there any public on the line, operator?

Coordinator

There is no public comments, and we are at 6:00.

Judy Sparrow – Office of the National Coordinator – Executive Director

Thank you.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Thank you, everyone.

Carol Diamond – Markle Foundation – Managing Director Healthcare Program

Thank you.

John Lumpkin – Robert Wood Johnson Foundation – SVP & Director

Check your e-mails, please.

Judy Sparrow – Office of the National Coordinator – Executive Director

Bye-bye.