

New York eHealth Collaborative Policy Committee Meeting
May 22, 2017
2 p.m. – 4 p.m.
Meeting Notes

A meeting of the NYeC Policy Committee was held on May 22, 2017. Present either in person or via telephone were:

Art Levin, Center for Medical Consumers, Co-Chair Policy Committee
David P. Martin, Consumer Health Care Advocate
Nance Shatzkin, Bronx RHIO
Steve Allen, HealthLink
Tom Check, Healthix RHIO
Amy Warner, Rochester RHIO
James Kirkwood, NYS DOH
Geraldine Johnson, NYS DOH
Deirdre Depew, NYS DOH
Christie Allen, NYS DOH
Jessica Eber, NYS OMH
Dr. Thomas Mahoney, Finger Lakes Health Systems Agency
Dr. David Cohen, Maimonides Medical Center
Dr. John-Paul Mead, Cayuga Medical Associates, P.C.
Susan Van Meter, HANYS
Valerie Grey, NYeC
Cindy Sutliff, NYeC
Jeannette Rossoff, NYeC
Nathan Donnelly, NYeC
Bob Belfort, Manatt
Alex Dworkowitz, Manatt

The meeting was called to order by Mr. Levin at 2:00 p.m.

I. Welcome and Introductions

Mr. Levin welcomed the Committee members and introduced Mr. Kirkwood to provide an update on DOH's work.

II. DOH Update

Mr. Kirkwood said that DOH was working on processing the consent recommendations, which would be provided to the Governor's office. He noted that the state budget references the State's contracting with Qualified Entities (QEs) and the State Designated Entity, and that a letter was sent to redesignate NYeC as the State Designated Entity for the SHIN-NY.

III. Review and Discussion of New Policy Provisions

Disclosures to Business Associates

Mr. Levin introduced Mr. Belfort to discuss revisions to the SHIN-NY Policies and Procedures. Mr. Belfort said that earlier in the year, there were a series of recommendations regarding changes to the Policies. He said that there were unanswered questions regarding those recommendations, and that NYeC felt that further discussion before the Policy Committee was warranted.

Mr. Dworkowitz that on the issue of information being supplied to business associates of participants, there was the question of who would be responsible in case the business associate violated a provision of the Policies. Mr. Check said that Healthix does enter into contacts with business associates, although those contracts are not as extensive as participation agreements. Mr. Check also said that participants have to provide in writing that the business associate is allowed to receive certain data on behalf of the participant.

Mr. Allen said HealtheLink generally does not have a separate contract with a business associate, and instead HealtheLink leaves it up to the participants to manage their relationships with business associates and hold them responsible for compliance.

Mr. Belfort said that on the question of whether the sending of requested information to business associates should be voluntary or mandatory, the preferred approach would be for the sending to be voluntary. The remaining question was therefore whether there would need to be a direct contract between the business associate and the QE.

Mr. Allen asked if Healthix required an agreement with a cloud vendor in the case where the cloud vendor was a business associate of a hospital. Mr. Check said there was no agreement in that case, since they did not enter into agreements with EMR vendors. Mr. Check said Healthix required business associates to enter into agreements with Healthix in any case where the business associate would do anything with the data other than accepting it.

Mr. Belfort said the important thing is that someone needs to be responsible for compliance, and if the participant is willing to be responsible for the compliance of the business associate, that is okay. Dr. Mead said it was better to have the QEs hold the participant responsible and that they shouldn't require QEs to enter into new contracts. Ms. Sutliff said it made sense to allow for both approaches and, at the minimum, hold the participant responsible.

Mr. Belfort said the QEs should verify that a business associate agreement is in place. Ms. Warner asked if this could be done through a simple attestation, and Mr. Belfort said that it could.

Analytics Audit Results

Mr. Dworkowitz explained that NYeC was still trying to determine the proper approach as to when the results of analytics queries should be included in audit results provided to patients. He said that the underlying premise of the proposed provision is that a QE's refinement of a data set

should not be considered a disclosure that must be captured in an audit, but providing the results of the data analysis to another entity should be considered a disclosure.

Mr. Allen noted that HealtheLink does not include disclosures under the one-to-one exception in the audit log. Ms. Shatzkin said she found the language of proposed (a) to be contradictory with the language of proposed (b).

Dr. Mead said he did not want to add to the audit burden of QEs, but once information is exported, it is no longer an internal quality improvement project, and if a patient asks for an audit everything that a QE has should be provided. Ms. Shatzkin said that she does not view the wholesale sharing of information with a Performing Provider System (PPS) lead as being subject to this requirement. Mr. Allen explained that Section 6.4 of the Policies talks about access to patient data, and therefore this is a provision about query based access, not pushes of information like a one-to-one exchange.

Mr. Belfort said that the Policies had been written with an access model in mind, but over time the SHIN-NY has evolved to a more mixed model allowing for both the push and pull of data. He said that the Policy provisions have not caught up with this change.

Ms. Sutliff said the Policies needed to be reviewed with this issue in mind. Mr. Levin agreed that they needed to take another look at this issue.

IV. Authorized Users Limitations

Mr. Belfort said there was an open question about who could be an authorized user of a participant. Mr. Dworkowitz noted that under one scenario, a physician who is not on the medical staff of a hospital could seek to access the SHIN-NY by becoming an authorized user of that hospital. Mr. Belfort said the issue extended beyond physicians, and that there is nothing in the definition of an authorized user that prohibits a participant from allowing the employees of one of its business associates from becoming authorized users.

Mr. Check said if there is staff that works at both a hospital and a clinic, that staff could only access the SHIN-NY through the hospital's system if they were acting as an agent of the hospital. Mr. Allen said that they followed the same system, and if a person worked at both a hospital and a clinic, that person would need two distinct user IDs: one for access on behalf of the hospital and another for access on behalf of the clinic. Ms. Shatzkin concurred with this approach.

Mr. Belfort said the concept of a workforce under HIPAA was a good framework to keep in mind. Under HIPAA, the workforce includes not only employees but individuals engaged directly by the covered entity. However, Mr. Belfort said that if the employees of a participant's business associate, who may not be members of the participant's workforce, can become authorized users, then the whole conversation about business associate access becomes moot because business associates would in effect gain direct access to the SHIN-NY.

Ms. Shatzkin said that if a participant is using a business associate to augment a care team, the participant has to train those individuals, but there's no reason why those individuals could not be authorized users. Mr. Check said that a third party would need to train them, and it is no longer the participant organization that is training, auditing, and supervising them.

Mr. Belfort said this may sound fine on paper as long as the participant is on the hook. But the problem is that there are business associates who are small operations with a small number of employees who do not have the same level of oversight as more established organizations. Under a middle ground, it would be okay to send data to such business associates through a push model. But in terms of direct access to the SHIN-NY, these types of organizations are a greater risk. Mr. Belfort therefore recommended that authorized users should be limited to those who meet the definition of a member of a participant's workforce under HIPAA.

Ms. Sutliff said this topic falls into the broader category of SHIN-NY use and access and could be folded into the white paper on that topic. Mr. Dworkowitz suggested that the Policies be modified to make clear that an authorized user must act on behalf of a participant. Mr. Check agreed.

V. Patient Authorization for Third Party Disclosures

Mr. Check provided a copy of a proposal regarding patient authorization for third party disclosures. Mr. Check said that the proposal was intended to allow a patient to authorize a disclosure to providers in other states for purposes of treatment, care management, or quality improvement. He said it was important that the QE have a contractual relationship with the third party receiving the disclosure.

Ms. Shatzkin asked about the process for accomplishing such an exchange. Mr. Check said that if a patient wanted to give a Florida hospital access to his or her records, there would have to be an agreement between the New York QE and the Florida HIE.

Mr. Martin said that other jurisdictions may discriminate against a patient in regards to HIV status and other issues, and there was a question of how to deal with a state that does not respect the patient's rights. Mr. Check said that this was a good point, and that the QE would need to decide whether this is a party that can be trusted to use the data for allowable purposes. Mr. Check suggested that language should be added to address this issue.

Mr. Dworkowitz asked if the provision could be limited to entities located out of state. Mr. Check said that that could work.

Mr. Check said that Healthix would work with outside counsel to revise the proposal.

VI. Cybersecurity

Mr. Levin said the work of KPMG had been completed in April, and they are just about finished editing the report. Mr. Levin said the report has aggregate data and does not provide information

that is specific to a QE or the SHIN-NY Hub, but that specific reports on QEs and the SHIN-NY Hub have been seen by the leadership team, DOH, the individual QEs, and NYeC senior staff.

Mr. Levin said the goal is to bring the SHIN-NY policies up to date with industry and national standards.

Mr. Check said the QEs individually have such Policies, and that the SHIN-NY Policies should set minimum standards but not set the language of the security policies. Ms. Sutliff agreed and said they would not get into detail.

Mr. Levin said this is the great threat to trusting the SHIN-NY, and that the major point of trust has shifted from consent and privacy to keeping the information secure.

VII. Closing

Mr. Levin thanked the group for their time and closed the meeting.

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