**New York eHealth Collaborative Policy Committee Meeting**
**April 20, 2022**
**2 p.m. – 3:30 p.m.**
**Meeting Notes**

A meeting of the NYeC Policy Committee was held on April 20, 2022. Present via telephone or videoconference were:

*Policy Committee Voting Members*
Art Levin, Chair, Center for Medical Consumers
Dr. Lawrence Brown, START Treatment & Recovery Centers
Dr. David Cohen, Maimonides Medical Center
Dr. Ram Raju, Health Disparities Consultant
Louann Villani, Ontrak Health
Taiymoor Naqi, Hixny
Steve Allen, HealtheLink
Chuck Bell, Consumer Reports
Alan Cohen, JASA

*Other Attendees*
Judy Mendoza, Rochester RHIO
John Sheehan, Rochester RHIO, BOC Representative
Nance Shatzkin, Bronx RHIO
Liana Prosonic, HealtheConnections
Elizabeth Amato, HealtheConnections
Patricia Burandt, HealtheLink
James Kirkwood, NYS DOH
Deirdre Depew, NYS DOH
Chelsea Sack, NYS DOH
Geraldine Johnson, NYS DOH
Kate Bliss, NYS DOH
Michele Warner, NYS DOH
Ken Wieczera, NYS DOH
Molly Finnerty, NYS OMH
Tammy Harris, OPWDD
Jennifer Rosenbaum, Office of the Aging
Puja Khare, GNYHA
Zeynep Sumer King, GNYHA
Renee Olmsted, Oneida Health Care
Dr. Kirby Black, Oneida Health Care
David Horrocks, NYeC
Cindy Sutliff, NYeC
Alison Bianchi, NYeC
Don Juron, NYeC
Ben Hanley, NYeC
Sam Roods, NYeC

Bob Belfort, Manatt
Alex Dworkowitz, Manatt

The meeting was called to order by Ms. Sutliff at 2 p.m.

## I. Welcome and Introductions

Ms. Sutliff welcomed the Committee members and provided an overview of the agenda, the meeting materials, and the meeting objectives.

## II. Federal and State Updates

Ms. Bianchi noted that NYeC's new CEO, David Horrocks, had officially begun with NYeC the preceding week.

On the federal side, Ms. Bianchi said that the federal Department of Health and Human Services had released its goals for the next four years, including equitable access to health care, and NYeC is reviewing and analyzing those goals.

On the state side, Ms. Bianchi noted that the public comment period has been triggered on DOH's 1115 waiver demonstration proposal. NYeC will comment on the State's approach as outlined in the 1115 waiver with the intention of ensuring a role for the SHIN-NY. Mr. Juron added that funding for the SHIN-NY had been approved by the state legislature in a level amount from the prior year.

## III. DOH Update

Mr. Kirkwood explained that the 1115 waiver proposal was available on DOH's website for review, and that the role of the QEs was described in the proposal.

Ms. Sutliff asked if there was any news on the proposed revisions to the SHIN-NY regulation. Mr. Kirkwood responded that DOH is in the process of internally reviewing proposed revisions to the regulations. He said that the regulation would reflect the all-in consent (AIC) model. He added that the provision regarding required connections to the SHIN-NY may also be modified: currently only providers with certified electronic health record technology are required to connect, but the rule may remove the requirement for certified electronic health record technology to better facilitate connection to the SHIN-NY by other provider types who may use other forms of health information technology to connect as well. This could result in increased connection by entities such as nursing homes.

Mr. Kirkwood expressed hope that the proposed regulation would be published prior to July.

## IV. All-In Consent Policies

Ms. Sutliff explained that an ad-hoc workgroup had been formed to help develop policy changes needed to implement the all-in consent model. She noted that the workgroup had met twice to discuss the potential policy changes.

Mr. Dworkowitz described the proposed revisions to the policies. He explained that the revisions were intended to clarify certain issues, such as the fact that consent forms are not required to include the name of any QEs.

In regard to the proposed revision to Section 1.3.5, Ms. Shatzkin said the use of the phrase "such QE" was not clear and may need to be modified.

Mr. Dworkowitz explained that the revisions to Section 1.8.2 would clarify that an all-in consent form could apply to non-participants, many of whom operate in other states. Mr. Allen noted that the provision used the term "transmittal" and not "access" and that it was important to use the correct term, since this was the provision that permits connections to national networks.

Mr. Dworkowitz noted that Section 1.9.6 would be modified to allow for the consent denial option to be provided via a separate form, rather than within the text of the all-in consent form itself. Mr. Cohen asked why the denial option would be important, since patients could simply not sign the consent form. Mr. Naqi responded a denial option could result in a patient's information being inaccessible in the case of an emergency.

In regard to Section 1.9.13, Ms. Shatzkin said she did not like the option of preventing payers from receiving all of a patient's protected health information. Mr. Allen said the policy provides QEs with the necessary flexibility to comply with HIPAA with respect to an exceedingly rare event. Ms. Shatzkin said the policy is giving QEs a hammer when they should use a scalpel. Mr. Naqi answered that this does not mean the QEs will use a hammer.

Dr. Brown asked why this occurred so rarely, and asked if there is an impediment to patients exercising this option. Dr. Cohen responded this HIPAA right is applicable only when a patient pays out-of-pocket and does not want their insurer to know about the visit, which is not a common request.

Ms. Sutliff asked the Committee members if they agreed to the proposed policy changes. Dr. Raju, Dr. Brown, Dr. Cohen, Mr. Allen, Mr. Cohen, Mr. Naqi, and Ms. Villani expressed support for the policy changes. Mr. Bell abstained.

## V. Form of All-In Consent

Ms. Sutliff presented to the Committee members the proposed language of the all-in consent form. Ms. Sutliff explained the key elements of the form and compared them to the existing model consent form.

Dr. Brown asked about the reading level of the form and whether the form would be available in languages other than English. Ms. Sutliff answered the form would be available in many

languages, depending on the region in New York State. Mr. Allen noted that HealtheLink's current forms are available in 11 languages.

Mr. Dworkowitz noted the form had been revised in response to a prior discussion at the Policy Committee meeting, and the form now included language that permitted the sending of text messages to patients to communicate with them about their consent choices.

Dr. Brown asked if other state agencies besides DOH would be reviewing the form. Ms. Depew (DOH) answered that DOH was in the process of communicating with other agencies about the form.

Dr. Brown said that assuming the form has promise in improving access to care, he was in favor of advancing it to the NYeC board for their approval. Other Committee members voiced support for the form.

## VI. Oneida Proposal

Ms. Sutliff reminded the Committee about Oneida Health's proposal, under which a provider that had broken the glass to access patient information during an emergency could continue to have access to view what happened to the patient after the patient was transferred to another facility.

Mr. Dworkowitz described three policy options to address Oneida Health's proposal: revise the break-the-glass policy exception, create a new quality improvement consent exception, or rely on the implementation of an all-in consent form.

Dr. Cohen said the all-in consent approach made sense, but added that a narrowly worded quality improvement exception could also be considered. Dr. Raju said consent is sacrosanct and was hesitant to break the covenant of consent. Dr. Brown said it was a tough question and also expressed hesitation about allowing for a consent exception in this particular circumstance.

Ms. Olmsted of Oneida Health said there was no guarantee that the patient would sign a consent at the next facility because the patient may not have the opportunity to sign a consent form. Mr. Allen responded that in his experience a community-wide consent does provide an avenue to address the problem raised by Oneida Health, although it is not a quick fix.

Ms. Sutliff said there did not appear to be consensus to adopt a consent exception to address the use case and the all-in consent approach appeared to be the best option for addressing the issue. Mr. Cohen expressed support for the all-in consent approach.

## VII. Closing

Ms. Sutliff said the committee had achieved their goals for the meeting. She said the next meeting would take place on May 18. She thanked the Committee and adjourned the meeting.