

New York eHealth Collaborative Policy Committee Meeting
May 10, 2023
1:30 p.m. – 2:30 p.m.
Meeting Notes

A meeting of the NYeC Policy Committee was held on May 10, 2023. Present via telephone or videoconference were:

Policy Committee Voting Members:

Chuck Bell, Advocacy-Consumer Reports
Alan Cohen, JASA
Dr. David Cohen, Maimonides (Chair)
Dr. Sabina Lim, Mount Sinai Health System
Russell Lusak, Selfhelp Community Services
Taiymoor J. Naqi, Hixny
Dr. Ram Raju, Health Disparities Consultant
Louann Villani, RN, Clinical Informatics Consultant

Ex-Officio:

Patti Burandt, HealtheLink (BOC Rep)
Deirdre Depew, DOH
Molly Finnerty, OMH PSYCKES
Daniel P. Hallenbeck, OHIP (Medicaid)
Thomas Hallisey, HANYS
Jim Kirkwood, NYS DOH
Todd Rogow, Healthix
Chelsea Sack, DOH
Jennifer Unser, DOH
Meg Vijayan, OPWDD
Rinzin Wangmo, NYCDOHMH
Ken Wiczerza, NYS DOH

Other:

Steve Allen, HealtheLink
Elizabeth Amato, HealtheConnections
Allison Behan, OPWDD
Bob Belfort, Manatt
Marlene Bessette, Rochester RHIO
Alison Bianchi, NYeC
Nicole Casey, NYeC
Rebecca Coyle, NYeC
Vivienne Destefano, Healthix
Alexander Dworkowitz, Manatt
Charlie Feldman, NYeC
Jen Freeman, OPWDD
Christie Hall, NYSTEC

David Horrocks, NYeC
Donald Juron, NYeC
Arthur A. Levin, Center for Medical Consumers
Kathryn Lucia, NYeC
Magdalena Mandziewska, Healthix
Dan Porreca, HEALTHeLINK
Liana Prosonic, HealtheConnections
Sam Roods, NYeC
Wendy Saunders, Hinman Straub
Nance Shatzkin, Bronx RHIO
Julia Sisti, NYeC
Cindy Sutliff, NYeC
Sarah Torosyan, GNYHA

The meeting was called to order by Dr. Cohen at 1:30 p.m.

I. Welcome and Introductions

Dr. Cohen welcomed the Committee members. Dr. Cohen noted that three new members – Dr. Sabina Lim, Russell Lusak, and Pat Roohan – had joined the Committee. Dr. Lim introduced herself and described her work as a System Vice President and Medical Director at Mt. Sinai, explaining she focused on policy, regulatory, and quality issues related to behavioral health. Mr. Lusak introduced himself as well and described his work with Selfhelp and VBP workgroups related to social determinants of health.

The Committee approved the meeting minutes from the prior meeting.

II. DOH Update

Mr. Kirkwood noted the New York State budget had been passed, although a month late. He said extra funding was included for the SHIN-NY to support public health surveillance activities. He said that during the pandemic, a lot of ad hoc public health reporting occurred, and the goal is now to standardized public health reporting across the SHIN-NY.

Mr. Kirkwood said the 1115 waiver was still being negotiated with CMS, and the hope was to have an approved waiver in June.

III. Federal Update: OCR Proposed Rule

Mr. Dworkowitz provided an overview of the HIPAA proposed rule from the Office of Civil Rights (OCR) related to protections for reproductive health information. He explained that the rule, if enacted, would require covered entities to receive an attestation before disclosing reproductive health information to law enforcement and in court and administrative cases. He added that the rule was intended to promote the privacy of such information following the

Supreme Court decision in *Dobbs* overruling *Roe v. Wade*. He said that it was only a proposed rule and likely would not take effect for a while, given potential litigation.

Ms. Sutliff said that the current SHIN-NY policies would remain in place relating to the protection of sensitive health information, but the Committee may need to consider whether any adjustments to SHIN-NY policy are needed at a later point in time.

IV. AD Hoc Workgroup Report

Dr. Cohen noted that an ad hoc committee had met to discuss potential changes to the SHIN-NY policies related to the upcoming 1115 waiver and the data lake. He explained that two policies had been addressed, one related to disclosures to DOH to evaluate performance under the waiver and the second for the disclosure of data to QE vendors. He said there remained some outstanding issues that need to be addressed with respect to the proposals, which were being tabled temporarily.

Mr. Lusak asked about the data the state was looking to obtain that is captured in CBOs' own databases, and said he did not think the state should aim to pull all such data. Dr. Cohen agreed, but noted the details of which data will be shared under the waiver may not fall within the province of the Committee. Mr. Kirkwood added that the data that providers currently share with the SHIN-NY are not the entire electronic health record but only an abstract, and the same concept would apply under the waiver.

V. Telehealth Policies

Dr. Cohen explained that when the pandemic hit, DOH enacted policies that were intended to provide flexibilities with respect to telehealth providers. Ms. Sutliff said that the current SHIN-NY policies do have a section that relates to telehealth, which permits telehealth providers to access data in the SHIN-NY based on verbal consent. She added that under current policy, the verbal consent lasts in duration only until the patient presents in person, at which point a written consent is required.

Ms. Shatzkin said there were a number of challenges to the current policy and thought perhaps that an updated policy could be developed based on the experience of operationalizing the policies put in place in response to the pandemic waiver. She observed that more and more providers are providing care only through telehealth, so that there may be patients who never have an in-person encounter with a particular provider. She said that current policies currently do not permit consent for access to Part 2 or OMH data, and added that the auditing of verbal consents has been a challenge on an ongoing basis. In addition, Ms. Shatzkin observed that the verbal consent option does not apply to CBOs, and she was concerned about a two-class system.

Ms. Shatzkin said one possibility is that the verbal consent would continue to persist. An alternative was to have it treated like a break-the-glass encounter, during which it does not persist at all.

Mr. Lusak asked if clients were being given the option of a menu of data they could provide consent to. Ms. Shatzkin responded it is an all-or-nothing choice. Mr. Lusak said this was a better policy, since it is very difficult to parse out what data can and cannot be shared.

Dr. Raju asked about the downside of obtaining verbal consent repeatedly. Ms. Shatzkin answered that means the provider needs to record the consent in notes on every occasion. Dr. Raju said this could be done, and Ms. Shatzkin agreed this could be a requirement.

Mr. Rogow said it causes confusion to have different types of consent, and for that reason Healthix has steered away from the verbal consent model.

Mr. Naqi said he was glad to be revisiting the issue. He said he did not want to treat verbal consent as a different type of consent; instead, it should be viewed as a different avenue for obtaining consent.

Dr. Cohen said they would continue to address the issue in upcoming meetings.

VI. Closing

Dr. Cohen thanked the Committee members and adjourned the meeting. The next meeting is scheduled for June 7, 2023 beginning at 12 pm.