

Response to Comments on Proposed Amendments to the Statewide Common Participation Agreement (SCPA)

October 2026

I. Overview

New York eHealth Collaborative (“NYeC”) received written comments on proposed amendments to the Statewide Common Participation Agreement (“SCPA”) and related Business Associate Agreement (“BAA”) provisions from six commenters, including an individual member of the public, a hospital association, representatives of health information networks and service providers, and a public health agency.

The comments addressed several issues, including the definitions and operation of the Statewide Data Infrastructure (“SDI”), NYeC’s provision of services, de-identified data, participation in other networks, notice and transparency, SDI data use, insurance, amendment procedures, BAA response periods, and implementation of the amended SCPA.

NYeC has reviewed the comments and agrees with a number of the recommendations. The proposed amendments will be revised where indicated below.

The following summarizes NYeC’s responses to the material issues raised. Other comments that supported the proposals, were not relevant to the proposed amendments or requested no change are not included in this summary.

II. General Comments

Statewide Form of Consent

Comment(s)	A commenter sought greater clarity regarding whether the definition of Statewide Data Infrastructure (“SDI”) is intended to authorize a single statewide consent status.
Response	No change needed. Neither the original SCPA nor the proposed amendments would require implementation of a statewide form of consent as described by the commenter. The SCPA’s references to a “statewide master patient index” and “statewide consent management system services” cited by the commenter are included in the definition as examples of existing technological components of the SDI and their inclusion was not intended to signal a shift toward a single consent status applied statewide. As the commenter points out, between 2023 and 2026, the SHIN-NY had planned to implement a statewide form of consent that would have allowed patients to sign a single consent form covering all SHIN-NY participants

treating that patient, thereby supporting statewide data access and services, reducing patient “consent overload” and provider burden, aligning with national networks such as TEFCA, and enabling broader social service organization participation. However, implementation of that statewide form was suspended in early 2026 after stakeholder feedback raised concerns about patient confusion, duplicate form collection, operational burden – especially for smaller providers – and the risk that an all-or-nothing model could increase opt-outs. As required by the SHIN-NY regulations and referenced in the SCPA, the SHIN-NY continues to advance development and implementation of a Statewide Consent Registry that will use existing local consent forms to aggregate consent values across QEs for statewide services, public health, and Medicaid.

Transparency and Improved Access to Governing Materials and Participant Information

Comment(s) Commenters recommended a centralized directory of SHIN-NY Participants and their HIN affiliations, a single authoritative location for governing materials, and more direct notice of amendments and committee decisions.

Response **No change needed.** NYeC appreciates the feedback on this point. NYeC is in the process of developing a SHIN-NY Participant Relationship Management system that will integrate NYeC, the Qualified Entities (QEs), the Department of Health (Department), and SHIN-NY Statewide Data Infrastructure (SDI) systems into a single, network-wide registry maintained by NYeC on behalf of the SHIN-NY, available as a shared statewide resource to NYeC, the QEs, the Department, and SDI operational systems. Over time, this system could assist in the development of a centralized directory as described in this comment.

With respect to governing materials and notice, NYeC launched a new SHIN-NY website in September 2026 (www.shin-ny.org) to house all SHIN-NY related materials, including SCPA-related materials and updates. In addition, where important communications need to be made to regulated entities, NYeC will continue to work with the Department of Health to ensure that those communications are distributed through the Department’s channels.

Government Participants and Technology Requirements

Comment(s) A commenter recommended adding an SCPA provision excusing Government Participants that lack required Participant Technology from data-contribution obligations while they demonstrate good-faith procurement efforts and report progress to the Department.

Response **No change needed.** Government Participants’ technology and data contribution requirements under the SCPA are best addressed through a “Government Participant SCPA Addendum,” approved by the Department,

and/or by proposing changes to the Data Contribution SOP through the Statewide Collaboration Process.

III. Comments on Specific SCPA Provisions

SCPA 1.21 - Data Use and Contribution Agreement

Comment(s) A commenter stated that replacing the term “Data Lake” with the term “SDI” in the definition of the Data Use and Contribution Agreement (“DUCA”) would not make sense unless the DUCA itself is also amended to update those references.

Response **The proposed amendments will be revised** to refer to the DUCA without reference to the purpose of the DUCA, in order to avoid any unintended disconnect between the definition of “DUCA” in the SCPA and the terms of the DUCA itself. The definition of “DUCA” will be revised to mean “the Data Use and Contribution Agreement between a QE and NYeC.”

SCPA 1.59 – Statewide Data Infrastructure (SDI)

Comment(s) A commenter supported a broader statewide infrastructure but recommended clearly identifying its current components and limiting open-ended incorporation of future infrastructure without use of the Statewide Collaboration Process.

Response **No change needed.** The SCPA’s definition of SDI includes the “data infrastructure used by NYeC to deliver services required under the NYeC-Department Contract.” NYeC believes the definition of SDI must balance the need to provide transparency in the purpose, function and use of the SDI with enough broadness to accommodate the fact that the services to which the definition refers can and do change over time as do the technologies underlying such services. The definition of SDI included in the proposed amendments sufficiently accommodates future technical infrastructure innovations and changes without the need to amend the SCPA each time a new component or technology is added. We also note that developments in and changes to the SDI and its components are regularly the subject of discussion and feedback through the appropriate Statewide Collaboration Processes, including though the SHIN-NY Technical Advisory Committee (“TAC”), Policy Committee, and Statewide Data Use Committee (“SDUC”).

SCPA 1.79 – Statewide Services

Comment(s) A commenter requested an explanation for deleting the term “Statewide Services” and noted that introducing “services” as an undefined term could cause confusion with Required Participant Services and Value-Added Services.

Response

In response to these comments, **the proposed amendments will be revised** to retain the definition and rename the term “NYeC Services” instead of “Statewide Services.” NYeC proposed removing the term and definition to avoid potential confusion as the term “Statewide Services” was originally intended to refer to services provided by NYeC as opposed to services provided by QEs. Since the original SCPA was drafted, however, the use of the term “statewide services” has evolved to refer to services that can be offered directly by NYeC (e.g., public health data services that NYeC provides to the Department) as well as services that are offered by the SHIN-NY (NYeC, QEs, or NYeC using QEs as vendor service providers) to participants once on a statewide basis (e.g., Statewide Encounter Alerting Services).

SCPA 3.3 -Eligible NYeC Participants**Comment(s)**

A commenter recommended replacing “may” with “shall” in the sentence governing NYeC’s provision of services to Eligible NYeC Participants.

Response

The proposed amendments will be revised. The language will read as follows: “If an Eligible NYeC Participant selects NYeC as its Designated HIN, Additional HIN and/or VAS HIN, NYeC may provide NYeC Services to such Eligible NYeC Participants, which NYeC Services shall be provided in accordance with this Agreement and the SHIN-NY SOPs.”

SCPA 7.12 - De-identified Data**Comment(s)**

Commenters generally supported a prohibition on commercial uses of de-identified SHIN-NY Data, but expressed differing views on scope and proposed exceptions. One commenter recommended a broad prohibition without the proposed exceptions. Another recommended restoring the prior approach or expressly protecting compensated, mission-aligned research, public health, artificial intelligence, analytics, and reporting uses that comply with the SOPs and applicable law.

Response

NYeC appreciates the comments and the discussion that the SHIN-NY Policy Committee had on this issue in September. NYeC agrees with the commenters that there is a need to ensure that de-identified data is used in a manner that is consistent with applicable law and the mission of the SHIN-NY while preserving the valuable, mission-aligned services that HINs have been providing over several years. Based on the comments and feedback and received from the SHIN-NY Policy Committee and QEs, **the proposed amendments will be revised** to more clearly communicate how these concerns can be balanced. The revised language will read as follows:

7.12. De-identified Data

- (a) Creation of De-Identified Data Sets: Notwithstanding anything in this SCPA to the contrary, Selected HIN and its contractors, subcontractors, and vendors (including other HINs) that have executed with Selected HIN business associate subcontractor agreements that incorporate all applicable terms of their BAAs, may de-identify any and all SHIN-NY Data Contributed by Participant.
- (b) Prohibited Commercial Uses and Disclosures of De-Identified Data: Except as expressly provided in subsection (c), no HIN shall for commercial profit, use, re-use, aggregate, data mine, sell, license, disclose, transfer, or otherwise exploit de-identified SHIN-NY Data, including for the development, training, improvement, marketing, or sale of a product or service; provided, however, that receipt by an HIN of compensation for the reasonable costs or value of the services performed, and not for the commercial value of the de-identified SHIN-NY Data, shall not be considered acting for commercial profit.
- (c) Non-Commercial Uses and Disclosures: An HIN may use or disclose de-identified SHIN-NY Data if the use or disclosure is not for commercial profit and such use or disclosure meets one or more of the following criteria:
 - 1) Any use by an HIN for a Permitted Purpose pursuant to Section 9.2 of this SCPA;
 - 2) Any disclosure by an HIN to a SHIN-NY participant for a Permitted Purpose pursuant to Section 9.2 of this SCPA;
 - 3) Any disclosure by an HIN to any third party (whether or not a SHIN-NY Participant) for Research activities, including but not limited to clinical trial feasibility studies, expressly authorized under the SHIN-NY SOPs and applicable governance and approval requirements;
 - 4) Other use cases specifically reviewed and approved in accordance with the SHIN-NY SOPs.

Nothing in this subsection authorizes a fee otherwise prohibited by this SCPA.

SCPA 8.1(a) – SHIN-NY SOPs (Other Approved Networks)

Comment(s)

Commenters generally objected to language authorizing NYeC to execute an agreement with an Other Approved Network on behalf of all Parties. One commenter stated that affirmative authorization from participants should be required. Other commenters sought clarification on the impact of the proposed change on HINs that have existing agreements (or want to enter into new separate agreements) with an Other Approved Network and how conflicting terms and HIN-specific consent-based network arrangements would be addressed and resolved.

Response

The proposed amendments will be revised to remove this provision. The process for signing a participation agreement when SHIN-NY entities begin to participate in an Other Approved Network can be addressed through the Statewide Collaboration Process in the “Other Networks Approval Process SOP,” which is administered by the TAC.

SCPA 8.1(c) – SHIN-NY SOPs (SOP Amendments)**Comment(s)**

A commenter asked NYeC to consider whether website publication provides sufficient transparency for SOP amendments.

Response

No change needed. NYeC appreciates the feedback on this point. At this time, the new SHIN-NY website (www.shin-ny.org) is the best means through which we are able to communicate with SHIN-NY participants and stakeholders statewide. Please refer to NYeC’s response to “Transparency and Improved Access to Governing Materials and Participant Information” regarding working with the Department of Health to ensure that communications are distributed through the Department’s channels where appropriate.

SCPA 9.2 – Bulk Data Rule**Comment(s)**

A commenter recommended adding a knowledge requirement to the prohibition derived from 28 C.F.R. Part 202.

Response

The proposed amendments will be revised as suggested.

SCPA 9.3(b) - SDI Permitted Purposes**Comment(s)**

Commenters generally supported HIN access to the SDI but requested clearer identification of NYeC’s role, greater transparency into statewide participation (through a centralized statewide directory identifying SHIN-NY Participants and the HINs through which they participate), and monitoring of SDI use and access patterns. One commenter stated that this provision was intended to address NYeC’s role in maintaining the SDI, not in its role as a HIN, and recommended that the provision expressly apply to “NYeC and HINs.”

Response

We appreciate the suggestions regarding greater transparency. Please refer to NYeC’s response to “Transparency and Improved Access to Governing Materials and Participant Information” regarding the development of a centralized SHIN-NY Participant Relationship Management system that could assist in the development of a centralized directory as described in this comment.

With respect to SDI data use and access reviews, NYeC notes that there are several processes in place to regularly review access to SDI data. First, all access to SDI data is governed by established SHIN-NY policies,

procedures, data use approvals, and access controls, including the “SDI Data Use Approval SOP with PDR Data Uses” and the “PDR Data Access and Use Process.” These processes require that access be limited to authorized users for approved purposes and that appropriate audit records be maintained. In addition to maintaining audit records, NYeC and its technology operators monitor platform activity for unusual operational patterns that may warrant further review. Examples may include significant increases in request volume, unexpected usage trends, or other anomalous activity associated with a Qualified Entity or other authorized user. Such monitoring is intended to identify potential security, operational, or compliance concerns for further investigation. And, as NYeC contracts with Qualified Entities for SDI-connected services, those entities are also required to comply with requirements regarding audit logging, access controls, and monitoring of authorized use. Finally, as required by the SCPA, NYeC is also facilitating the development of an SDI Audit and Appeals process with an independent third-party auditor (KPMG). Starting in 2026-2027, an annual audit plan will be developed and information on the plan and audits conducted will be shared with the SCP Committees, the NYeC Board, the Department and SHIN-NY stakeholders. NYeC will continue to review and monitor the efficacy of these processes to ensure they are operating as intended and will implement enhancements and improvements as necessary over time.

With respect to NYeC’s role in the SDI as reflected in SCPA 9.3(b), NYeC notes that section 2.2(c)(iv) of the SCPA states that NYeC’s role within the SHIN-NY includes “[p]rovid[ing] access to and use of the SDI and the Required Participant Services to those SHIN-NY participants who are Eligible NYeC Participants....” Consistent with that role, Section 9.3(b) is intended to address NYeC’s use of data contributed to or held or maintained in the SDI for all of the permitted purposes, which would cover both its role as a HIN and as the SDE responsible for operating and maintaining the SHIN-NY. While NYeC, as the SDE, is responsible for operating and maintaining certain statewide technology, for example, NYeC, as a HIN, is also permitted to share SDI Data with the Department of Health as an Eligible NYeC Participant for public health and Medicaid permitted purposes. To provide further clarity, however, **the proposed amendments will be revised** to replace the proposed use of “HINs” in Section 9.3(b) with the term “NYeC and HINs.”

SCPA 15.6 - Assignment of Insurance Rights

Comment(s)

Commenters recommended deleting Sections 15.6(b) and (c), explaining that blanket assignment and recovery provisions may conflict with insurance policy terms and underwriting requirements.

Response

The proposed amendments will be revised to allow a HIN-Specific Modification that would permit the parties thereto to modify, replace or delete (in whole or in part) any term or provision of Sections 15(b) and/or (c).

Any such HIN-Specific Modification would be applicable to only those HINs that execute the HIN-Specific Modification.

SCPA 15.8(d) and (e) – Insurance - Evidence of Required Coverage

Comment(s) A commenter recommended limiting requests for alternative evidence of insurance compliance to non-confidential information.

Response **No change needed.** Information shared as part of these provisions is covered by the confidentiality provisions in Section 13 of the SCPA.

SCPA 15.8(j) – Waiver of Subrogation

Comment(s) Commenters recommended deleting the waiver of subrogation requirement or stated that they would not object to its deletion because it may conflict with insurance requirements.

Response **Seeking specific proposals.** During the first round of public comment, NYeC sought proposals from SHIN-NY Participants on the specific substantive concern and how this concern might best be addressed. Because we did not receive any proposals during the first round of public comment, we are again seeking specific concerns and proposals during the second comment period. To assist commenters in providing specific proposals in the second round of public comment, we have added the following language to Note 1 to Section 15.8(j) in the SCPA Amendment document to more fully explain the reasoning behind the inclusion of the waiver of subrogation language in the SCPA:

One of the primary goals of the SHIN-NY is to ensure that providers have access to data to improve patient care. In order to achieve that goal, the SHIN-NY requires ongoing participation by and collaboration among a large and diverse group of stakeholders, including large health systems that are required to participate, voluntary participants of varying levels of size, and the HINs, which are small non-profit entities largely funded by the State. A waiver of subrogation encourages this participation and collaboration by reducing the risk that stakeholders will become entangled in litigation arising from insured losses. By preventing insurers from pursuing reimbursement claims against the other party after paying a covered loss, the provision reduces the potential for disputes and promotes commercial certainty.

SCPA 16.1(a) – Amendments

Comment(s) Commenters generally objected to the breadth of the proposed amendment, with some recommending deletion and others recognizing the need for some flexibility in addressing urgent and emergency situations and recommending several approaches to address these situations. Recommendations included limiting interim amendments to urgent changes required by newly enacted or amended law or regulation; requiring

mandatory minimum (or best efforts to provide) 30-day advance notice (with exceptions for public health emergencies or regulatory/legal mandates with earlier effective dates); requiring that NYeC post with any interim amendment a statement of the specific legal authority necessitating the amendment and a confirmation of a Participant's right to terminate the SCPA based on an objection to materials changes to the SCPA; a requirement that NYeC may implement an interim amendment only with the Department's approval; and a requirement that the ratification or withdrawal of any interim amendment through the Statewide Collaboration Process occur within 60 days of the effective date.

Response

NYeC agrees with several of the suggestions raised by commenters and **the proposed amendments will be revised** as follows:

16.1(b) Interim Amendments. Notwithstanding anything in this SCPA to the contrary, in the event that NYeC reasonably determines that it is necessary to urgently amend this SCPA in a manner faster than could feasibly be accomplished through the Statewide Collaboration Process to address a declared public health or other emergency or to avoid a specific identified violation of regulation or law (e.g., a state regulation is adopted on an emergency basis), NYeC may, with the Department's prior approval, implement an interim amendment to this SCPA in accordance with this Section 16.(b) and the SOPs.

- (i) NYeC shall use best efforts to publish notice of an interim amendment no less than thirty (30) days in advance of the effective date of such amendment. Such notice shall include the specific legal authority or circumstance necessitating the interim amendment and notice that, if a Participant objects to a material change to this SCPA, such Participant retains the right to terminate this SCPA under Section 12.2(a).
- (ii) Such interim amendment shall be effective upon its publication and until it is withdrawn or further amended by NYeC or ratified pursuant to the Statewide Collaboration Process, which process shall commence within 60 days of the effective date.
- (iii) Such interim amendment shall be reasonably limited to address the applicable declared public health or other emergency or to avoid the applicable violation of regulation or law.

IV. Comments on the Business Associate Agreement

Access to and Amendment of Designated Record Sets (BAA Sections 2(f) and (g))

Comment(s)

A commenter recommended replacing the seven-business-day response period with three calendar days while retaining the requirement to respond sooner when practicable.

Response

The proposed amendments will be revised to change the language to "three business days."

V. Implementation of the Amended SCPA

Common Effective Date and Re-execution

Comment(s)	A commenter requested sufficient time for hospitals to complete any internal approval or re-execution process before the amended SCPA becomes effective.
Response	No change needed. While NYeC appreciates the concern raised about the need for hospitals to conduct a thorough internal review of the finalized Amended SCPA, the original SCPA has established a 30-day notice period before amendments can take effect. The rationale for this process is based on one of the primary objectives underlying the adoption of a statewide common participation agreement - that the SHIN-NY operate within a common statewide set of rules and requirements. Execution of the original SCPA was an extensive processes, spanning approximately 1.5 years, during which time the SHIN-NY had to accommodate different sets of rules for participants - those rules set forth in the SCPA, and those rules in the various legacy participation agreements that remained in effect until the SCPA was fully executed statewide. NYeC believes that this notice period, combined with the fact that SCPA amendments are developed and discussed through the Statewide Collaboration Process and with stakeholder input (including one or more public comment periods) provides sufficient notice and time to conduct those internal reviews and processes, while meeting the objective of having a uniform set of rules and standards that are applicable for all participants statewide at the same time.