

New York eHealth Collaborative Policy Committee Meeting
December 16, 2022
2:30 p.m. – 3:30 p.m.
Meeting Notes

A meeting of the NYeC Policy Committee was held on December 16, 2022. Present via telephone or videoconference were:

Policy Committee Voting Members

Dr. Ram Raju, Health Disparities Consultant
Dr. Lawrence Brown, START Treatment & Recovery Centers
Dr. David Cohen, Maimonides Medical Center
Louann Villani, Ontrak
Taiymoor Naqi, Hixny
Steve Allen, HealthLink
Alan Cohen, JASA
Chuck Bell, Consumer Reports

Other Attendees

Art Levin, Chair, Center for Medical Consumers
Deirdre Depew, NYS DOH
Ken Wiczerza, NYS DOH
Cindy Sutliff, NYeC
Sam Roods, NYeC
Kathryn Lucia, NYeC
Ben Hanley, NYeC
Bob Belfort, Manatt
Alex Dworkowitz, Manatt

The meeting was called to order by Dr. Cohen at 2:30 p.m.

I. Welcome and Introductions

Dr. Cohen welcomed the Committee members and provided an overview of the agenda and the meeting materials. A motion to approve the previous meeting's minutes was approved.

II. 42 CFR Part 2 Proposed Rule

Mr. Dworkowitz described the recently issued 42 C.F.R. Part 2 proposed rule. He noted the rule was intended to align Part 2 requirements with HIPAA, but that important distinctions between the two regulations remain. He explained that the proposed authorization form requirements differed depending on whether a disclosure was made directly to a recipient or such disclosure

occurred via an intermediary, and he questioned the value of such distinction. Dr. Raju said the distinction could be based on security concerns.

III. DOH Update

Ms. Depew noted that the Commissioner of the Department of Health had announced her resignation, and that she would complete her service at the end of December.

IV. CBO Policy Changes

Ms. Sutliff introduced the subject of policy changes intended to address CBO participation in the SHIN-NY under the new 1115 Medicaid waiver. Mr. Dworkowitz described the proposed changes to the policies. He explained that changes around the consent policies were intended to permit CBOs to receive information under one-to-one exchanges and alerts without consent, to the extent consistent with HIPAA. He said the security changes would clarify that HIPAA security requirements only apply to protected health information, not other forms of information.

Mr. Naqi questioned how one-to-one exchanges would work, noting that it is hard to govern what is minimum necessary. He asked how a QE could determine which lab results a CBO needs to view. Mr. Allen responded that the decision would be made by the participant, and there would be a standing order saying certain data elements could be disclosed.

Dr. Cohen said it was important that access not just be given to social service providers but also referral agencies. Dr. Raju agreed, noting that doctors are busy. Dr. Brown said he liked the ability of CBOs to obtain needed data, but said it was risky, and worried that people may discriminate against patients they do not want to see. Mr. Naqi responded that this is a risk under the current system, as information about mental health status could be used as a basis for discrimination. Ms. Sutliff noted that there are federal and state laws that protect against discrimination in such circumstances.

Mr. Naqi spoke in favor of applying HIPAA security requirements to CBOs, and he said he did not want PHI to be sent to entities that are not required to comply with HIPAA. But he asked whether this policy would get in the way of the SHIN-NY's support of the waiver. Dr. Raju noted the CBOs are not financially well funded, and that there may be problems with CBOs meeting a strict security standard.

Dr. Cohen noted that small physician practices have learned how to comply with HIPAA security requirements. Mr. Belfort agreed, saying the HIPAA security rule is scalable, and what a small CBO must do to protect data is not the same thing as what a large hospital system must do. Mr. Belfort added that it could be helpful to modify the policy language to emphasize the flexibility in the HIPAA security rule.

Dr. Cohen asked if there was consensus to adopt the proposed policy changes with the modification to emphasize HIPAA flexibility. Committee members expressed agreement.

V. Utilization Review Proposal

Mr. Dworkowitz presented the two policy options related to utilization review. The first involved a narrow definition of utilization review which related to reviews for medical necessity only. The second was a broader definition of use of data by health plans for purposes of determining payment. Mr. Allen said he thought they should focus on the question of medical necessity, and that payment gets into an area that is more problematic.

Mr. Allen noted that the definition of care management excludes utilization review, and asked why the definition was written that way. He said that if care management was revised to include utilization review that would address the issue. Dr. Raju said he agreed.

Dr. Cohen asked if there was consensus to define utilization review based on medical necessity. Committee members agreed.

VI. Closing

Dr. Cohen wished everyone a happy holiday and adjourned the meeting.