

**New York eHealth Collaborative Policy Committee Meeting**  
**July 22, 2020**  
**2 p.m. – 4 p.m.**  
**Meeting Notes**

A meeting of the NYeC Policy Committee was held on July 22, 2020. Present via telephone were:

Art Levin, Center for Medical Consumers, Chair of Policy Committee  
Nance Shatzkin, Bronx RHIO  
Steve Allen, HealthLink  
Amy Warner, Rochester RHIO  
Karen Romano, HealthConnections  
Tajymoor Naqi, Hixny  
Todd Rogow, Healthix  
James Kirkwood, NYS DOH  
Jonathan Karmel, NYS DOH  
Deirdre Depew, NYS DOH  
Molly Finnerty, NYS OMH  
Carmen Barber, NYS OMH  
Tammy Harris, OPWDD  
Margaret Vijayan, OPWDD  
Dr. John Barbuto, OPWDD  
Jen Freeman, OPWDD  
Laurie Pferr, Office for the Aging  
Dr. John-Paul Mead, Cayuga Health System  
Dr. Tom Mahoney, Common Ground Health  
Dr. Glenn Martin, Queens Health Network  
Dr. David Cohen, Maimonides Medical Center  
Puja Khare, GNYHA  
Tom Hallisey, HANYS  
Linda Adamson, NYSTEC  
Jill Eisenstein, BOC Representative  
Chuck Bell, Consumer Reports  
Val Grey, NYeC  
Cindy Sutliff, NYeC  
Alexandra Fitz Blais, NYeC  
Sam Roods, NYeC  
Bob Belfort, Manatt  
Alex Dworkowitz, Manatt

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

**I. Welcome and Introductions**

Mr. Levin welcomed the Committee members and provided an overview of the meeting agenda. He introduced Mr. Kirkwood to provide an update.

## **II. DOH Update**

Mr. Kirkwood said DOH was continuing to work with local health departments on contact tracing. He noted the quality of laboratory data continued to be an issue, given that important demographic information is often missing.

## **III. Executive Director Update**

Ms. Grey explained that the state budget situation largely depends on federal stimulus packages. She said NYeC is focused on working with Qualified Entity (QE) leaders on developing awareness of how the SHIN-NY has helped address the COVID-19 crisis.

At the federal level, Ms. Grey said that NYeC is continuing to work on its role in the Trusted Exchange Framework and Common Agreement (TEFCA). She noted that the federal government had recently released a proposed rule regarding Medicare hospital reimbursement, and NYeC had submitted a comment on various issues, including the opportunity for health information exchanges to improve quality measurement and better standards for data on race and ethnicity. Mr. Kirkwood noted that when the QE data was one of the better sources of race and ethnicity data regarding COVID-19 and hospitalizations.

## **IV. Telehealth and SHIN-NY Policies**

Mr. Dworkowitz described the proposed policy provisions regarding telehealth, including the proposal to allow verbal consent to be durable if the Participant provided certain information to the patient at the time consent was given.

Dr. Mahoney asked if the consent would apply to the individual practitioner obtaining consent or the legal entity associated with the practitioner. Mr. Dworkowitz responded it would be the legal entity, and that this point could be clarified in the language. Dr. Martin also recommended clarifying that the phrase “preceding sentence” applied to all three of the prior bullets. He added that if consent can be provided verbally, a patient should be able to revoke consent verbally as well.

Ms. Warner said she saw implementation and auditing issues with the proposal. Ms. Eisenstein said the proposal would add complexity to the consent process at a time when they are trying to simplify the consent process.

Ms. Shatzkin said she appreciated the additional thought that went into the durability issue, but that she preferred consent being obtained via a telemedicine system if the consent were to be durable. Dr. Martin said that providers can be as advanced with their systems as they want, but if their patients don't have smartphones that allow them to provide electronic signatures such a system does not work. Dr. Martin agreed that the durability question could get messy, and

suggested one approach was to allow the consent to be durable for an episode of care, which could comprise multiple visits.

Mr. Naqi said he thought the policy as presented is nimble and implementable, and it addresses the situation of patients who do not have internet access. Dr. Mahoney and Dr. Mead agreed that telemedicine should not be narrowly defined to only apply to apps that have the ability to collect a patient's signature electronically. Mr. Naqi said it was important for clinicians to be able to access SHIN-NY data between patient visits, not only when the patient was present in front of the clinician.

Ms. Eisenstein said that other than the issue of durability, there is the question of how to segment Part 2 and other sensitive data, and that this aspect will add significant complexity to a process they are trying to simplify. Mr. Dworkowitz said it would be important to hear from OMH regarding the need to segment mental health information.

Mr. Levin asked for reaction to the episode of care concept. Ms. Warner said she preferred limiting durability to an episode of care. Mr. Belfort said he thought the episode concept represents a balance, since the written consent remains the standard for the SHIN-NY and they are creating an exception for telehealth.

Mr. Allen said he did not see a difference from a patient's perspective as to whether consent would be verbal or written. Dr. Mahoney said he thought a lasting consent was more consistent with what patients want. Mr. Karmel said they should work to break down the distinction between written and verbal consent, and that they were not relaxing the requirements to obtain consent, but instead thinking about what consent should mean. He added that many people comprehend things better verbally than when they are in writing, and the need for a signature is becoming anachronistic.

Ms. Sutliff said Policy Committee staff would regroup on this issue given the discussion and bring back a reframed approach for the Policy Committee to consider and come to consensus on at the September meeting.

## **V. Patient Mediated Exchange**

Mr. Dworkowitz described the principles for allowing disclosures to patient apps. He noted that these principles were driven by the need to comply with the information blocking rule, which would take effect in November.

Mr. Kirkwood said the standards for identity proofing may not be a policy committee issue, but a technical question. Ms. Eisenstein said it could be included in the QE certification process.

Ms. Grey said there are bills in the state legislature related to consumer privacy and health apps, and she asked how that interacted with this. Mr. Belfort answered that there is an exception in the federal rules for compliance with state privacy laws, so if state law requires patient consent the QEs could require consent without engaging in information blocking.

Dr. Mahoney said he thought patients would more likely seek their data directly from providers. Ms. Khare said it really depends on how these apps market themselves, and if the apps are aware that HIEs have information about patients they may recommend that patients seek data from those HIEs. Ms. Romano said that HealthConnections has received three requests from patients this year, and they have provided records to them after going through a notarization process.

Dr. Martin asked about legal and ethical obligations to correct errors in data. Mr. Belfort responded that the law does not address liability for transmitting incorrect information. Dr. Martin recommended that they address the need to correct flawed data sent to apps.

Mr. Dworkowitz raised the possibility of a bad actor setting up an app in order to capture patient data. Ms. Grey said in such a scenario, they may need to challenge the need to make such as disclosure as an enterprise. Mr. Bell said if a disclosure were made in such a case, the public would not blame the bad actor seeking the data but would blame the person who shared the data.

Dr. Barbuto asked if QEs may be exempt from the information blocking rules to the extent they transmit information and not store it. Mr. Belfort said simply transmitting information does not absolve the QEs from abiding by the information blocking rules; it simply means that the QE's obligations related to transmission and not storage. He added that the need to comply with the rule should not drive the functionality of the SHIN-NY; rather they need to have a business case that makes sense for the market.

## **VI. Committee Charters**

Mr. Levin said NYeC was undertaking a review and update process of committee charters. He noted that, in relation to the Policy Committee Charter, membership terms would be changed so that individuals would not be serving unnecessarily long terms on the Committee and in an effort to ensure broad representation of SHIN-NY stakeholders. The updated Charter will be reviewed with the Committee at the October in-person meeting.

## **VII. Closing**

Mr. Levin thanked the Committee and adjourned the meeting. He noted that the next meeting of the Committee was scheduled for September 29, 2020 from 2-4 pm as a zoom conference call meeting.