

New York eHealth Collaborative Policy Committee Meeting
May 20, 2020
2 p.m. – 4 p.m.
Meeting Notes

A meeting of the NYeC Policy Committee was held on May 20, 2020. Present via telephone were:

Art Levin, Center for Medical Consumers, Chair of Policy Committee
Nance Shatzkin, Bronx RHIO
Steve Allen, HealtheLink
Dan Porreca, HealtheLink
Amy Warner, Rochester RHIO
Karen Romano, HealtheConnections
Taiymoor Naqi, Hixny
Todd Rogow, Healthix
James Kirkwood, NYS DOH
Deirdre Depew, NYS DOH
Jason Ganns, NYS DOH
Molly Finnerty, NYS OMH
Jennifer Freeman, OPWDD
Dr. John-Paul Mead, Cayuga Medical Associates
Dr. Tom Mahoney, Common Ground Health
Dr. Raul Vazquez, Urban Family Practice
Dr. David Cohen, Maimonides Medical Center
Dr. Glenn Martin, Queens Health Network
Zeynep Sumer-King, GNYHA
Tom Hallisey, HANYS
Linda Adamson, NYSTEC
Jill Eisenstein, BOC Representative
Val Grey, NYeC
Cindy Sutliff, NYeC
Nate Donnelly, NYeC
Alexandra Fitz Blais, NYeC
Toby Lewis, NYeC
Zoe Barber, 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. Ms. Grey introduced Mr. Ganns from the Office of Health Insurance Programs, who said he was looking to find ways that Medicaid could be more of a partner with the SHIN-NY.

II. DOH Update

Mr. Kirkwood said DOH has been doing a lot of work on responding to COVID-19, including working on developing a contact tracing app. Mr. Ganns said they are just starting to see enrollment in Medicaid increase based on unprecedented job loss, and they are seeing a reduction in delayable spending categories, such as dental.

Dr. Mead said while working at New York Presbyterian, he had heard that the New York City Department of Health could not access the patient data they needed. Mr. Kirkwood responded that Healthix was working to provide New York City with the data they needed. Ms. Shatzkin echoed Dr. Mead's concern, saying efforts had been fragmented and it would be useful to conduct an evaluation to make sure things work better next time. Dr. Vazquez said the systems are antiquated and need to be updated.

III. Executive Director Update

Ms. Grey said that the COVID-19 crisis has had a significant impact on life and the economy, resulting in a severe strain on the state Medicaid program's budget. She said that the extent to which the state budget and Medicaid will be impacted depends on whether the federal government agrees to provide aid to state and local governments.

Ms. Grey said we should not lose sight of the amazing work the SHIN-NY has done with respect to COVID-19, and that the system has played a key role in helping to flatten the curve, including the sending of alerts to providers and COVID-19 test results. Ms. Grey said that this is what the SHIN-NY was built for.

On the federal side, Ms. Grey said that NYeC is trying to stay as informed as possible on potentially becoming a Qualified Health Information Network (QHIN) and part of the Trusted Exchange Framework and Common Agreement (TEFCA), and that certain policy changes may be needed to meaningfully participate in the national exchange. She also said that NYeC is continuing to work to make sure the SHIN-NY can be a tool to help hospitals comply with the CMS interoperability rule regarding notifications.

IV. Life Insurance Policies

Mr. Dworkowitz described the conflict between the current SHIN-NY Policies – which require a Level 2 consent form for life insurers to receive SHIN-NY data – and the practice of life insurers who use their own consent forms.

Dr. Mahoney said it was important that the life insurance consent form include a reference to health information exchange. Ms. Sutliff said that the life insurer forms do list health

information exchanges as a potential source, but they do not call out the names of individual health information exchanges. She said she thought this was sufficient to put patients on notice.

Ms. Sumer-King asked why life insurers would be treated differently than providers, which use a form that names either a QE or the SHIN-NY. Mr. Dworkowitz responded that there is no requirement that consent forms name a QE or the SHIN-NY; this is just what is in the model form. Dr. Martin said on the model form there are a few sentences describing what a health information exchange is, but there is no such information on the life insurance forms. Ms. Shatzkin said it is difficult for hospitals to pull together hard copies of clinical records, and that providers will be glad to get rid of this obligation.

Mr. Rogow said the biggest challenge for life insurers is obtaining the extra consent form, and he is not opposed to keeping the 72-hour requirement. Mr. Porreca said there is value to a patient, in that there is quicker time to reach resolution on a decision.

Ms. Sutliff summarized the written comments received from members. She said that the members largely supported the move away from the Level 2 consent form but some wanted a reference to the SHIN-NY or QE names on the forms, which life insurers are unlikely to agree to. Mr. Levin moved to approve the proposed language at section 1.8.2(a). Mr. Allen seconded the motion. Mr. Levin asked if there were any objections to the approval and heard none.

Mr. Levin moved the discussion on to the 72-hour notice provision. Dr. Mead noted that QEs typically do not contact patients and asked how the notice worked. Mr. Rogow answered that Healthix sends emails to patients, but has only done this a handful of times.

Dr. Martin said the 72-hour rule continues to make a great deal of sense. He said that in practice, patients often may have changed employers or insurers, and the notice provision gives patients an opportunity to know what is happening, and that it is not overly burdensome to send out an email. Mr. Naqi said that QEs are not traditionally patient facing and the patient typically does not know who Hixny is. He said that the same concern could exist for providers, in that patients may not understand what they are consenting to, but there is no 72-hour buyer's remorse provision for disclosures to providers. Mr. Allen said the form that is being signed provides permission for the patient to access all of their medical information for purposes of life insurance, and a health information exchange is just one means to get at that, and that requiring patient emails adds costs that may make it less worthwhile for QEs to do this.

Dr. Martin said a lack of patient understanding of the SHIN-NY is not a good argument in favor of this change, and that the 72-hour notification requirement is an opportunity for education. Ms. Shatzkin asked what is magical about 72 hours? She said it is a burden to send out an email but presumably QEs will be paid to do this. She added that she thought it made sense to implement change more slowly.

Ms. Sutliff said there was agreement on the change to a Level 1 consent, but there was still debate on the 72-hour requirement. Mr. Levin said they would move on and come back to this discussion at the June Policy Committee meeting with proposed language changes to the 72-hour requirement.

V. Community-Based Organization Participation

Ms. Sutliff noted that the Policy Committee had last discussed the role of community-based organizations (CBOs) at the February meeting, but further discussion has been postponed due to COVID-19 related discussions. Mr. Donnelly said that 60% of the CBOs who engage in discussions with NYeC are already participants of the SHIN-NY, and they are primarily using alerts as a service, such as in cases where food delivery needs to be coordinated when someone is returning home from a hospital. He added that many CBOs have a covered entity component.

Mr. Dworkowitz described the proposed policy language on CBOs and the changes to the language that emerged from the prior discussion.

Mr. Allen said the key point is that CBOs should not be able to access a patient's entire medical record, but that portal access still could be permitted if the information provided to the CBO was limited.

Dr. Mead said he was not happy to see that access could only be provided with written consent, since under DSRIP large networks may need to have access to SHIN-NY data. Mr. Dworkowitz responded that if a consent form names all members of a PPS as potential recipients, then such form would apply to CBOs participating in that PPS.

Mr. Dworkowitz described the potential options for re-disclosures of data held by CBOs. Dr. Mahoney said he preferred the third option – which allows for redisclosures to personal representatives and other participants for purposes of treatment and care management – because that option would allow for closed loop referrals. Ms. Shatzkin agreed.

Ms. Grey asked if the Committee had to be concerned about the precedent of the CBO disclosure rules, given that federal rules were encouraging more disclosure of data to apps controlled by patients. Mr. Belfort responded that in the CBO context, the patient is consenting to disclosure but not requesting the disclosure, which differs from the scenario where a patient requests a disclosure which triggers the obligation to disclose.

Ms. Sutliff said it sounded like the committee was in agreement with the third option. Mr. Levin asked if the Committee agreed to the CBO policy language as proposed. Members of the Committee responded that they were in agreement. The proposed policy recommendations on CBO (non-covered entity) participation in the SHIN-NY will be presented to the NYeC Board at their September meeting for approval and recommendation to NYS DOH.

VI. Telehealth Policies

Ms. Sutliff said that it was important to consider development of telehealth policies that address some of the questions regarding the current SHIN-NY telehealth waiver on consent once the Governor declares an end to the public health state of emergency. Ms. Grey seconded that care will be delivered differently for a long time, and changes regarding telehealth have occurred at

the federal level. Ms. Sumer-King said GNYHA will be drafting a policy paper asking for more telehealth flexibilities going forward, and that the organization looked forward to the discussion. Mr. Dworkowitz outlined several of the key points to be discussed regarding telehealth at the next meeting.

VII. Closing

Mr. Levin thanked the Committee and adjourned the meeting.