

New York eHealth Collaborative Policy Committee Meeting
February 27, 2018
12:30 p.m. – 4 p.m.
Meeting Notes

A meeting of the NYeC Policy Committee was held on February 27, 2018. Present either in person or via telephone were:

Art Levin, Center for Medical Consumers, Co-Chair Policy Committee
Nance Shatzkin, Bronx RHIO
Steve Allen, HealthLink
Tom Check, Healthix RHIO
Amy Warner, Rochester RHIO
James Kirkwood, NYS DOH
Deirdre Depew, NYS DOH
Geraldine Johnson, NYS DOH
Christie Hall, NYS DOH
Jonathan Karmel, NYS DOH
Jessica Eber, NYS OMH
David Nardolillo, OPWDD
Megan Jay, OPWDD
Virginia Scott-Adams, OPWDD
Dan Tietz, AIDS Institute
Dr. John-Paul Mead, Cayuga Medical Associates
Dr. Tom Mahoney, Common Ground Health
Dr. David Cohen, Maimonides Medical Center
Dr. Glenn Martin, Queens Health Network
Linda Adamson, NYSTEC
Laura Alfredo, GNYHA
Evan Brooksby, HANYS
Valerie Grey, NYeC
Eric Boateng, NYeC
Cindy Sutliff, NYeC
Jeannette Rossoff, NYeC
Bob Belfort, Manatt
Alex Dworkowitz, Manatt

The meeting was called to order by Mr. Levin at 12:30 p.m.

I. Welcome and Introductions

Mr. Levin welcomed the Committee members and introduced Mr. Boateng, the new Statewide chief information security officer (CISO) for NYeC. Mr. Boateng said he was happy to take on this roll with NYeC, and he described his background, working as a military cybersecurity officer and as the chief security officer for the Department of Human Services in Georgia, among other positions. Mr. Boateng said he was very passionate about cybersecurity and was glad to

return to New York where he grew up. Mr. Levin welcomed Mr. Boateng and said he talents are very much needed.

II. DOH Update

Mr. Levin introduced Mr. Kirkwood to provide an update. Mr. Kirkwood said DOH was reviewing the most recent policy revisions from the NYeC board, which likely would be approved soon. Mr. Kirkwood said there was a lot of activity going on with DOH, with interest on integrating EHRs with the state's prescription drug monitoring database.

III. Federal and State Advocacy Update

Ms. Grey provided an update on the Governor's budget and other advocacy efforts. Ms. Grey said she thought that SHIN-NY funding was in pretty good shape in this budget cycle.

On the federal side, Ms. Grey noted that NYeC had recently submitted a letter to ONC regarding the proposed Trusted Exchange Framework and Common Agreement (TEFCA). She said NYeC was clearly supportive of the concept of the TEFCA but had made points about the need to leverage existing infrastructure, achieving sustainability, realistic schedules, and unintended consequences. Mr. Check commented that he was glad NYeC included in its comment letter points about the value of QEs in providing alerts and analytics.

Mr. Tietz asked if there was funding in the budget for the patient portal. Ms. Grey said none of the funding was allocated specifically for the portal, but that performance based contracting requirements could be used to potentially address consumer access.

IV. 2017 Policy Year in Review

Mr. Levin reviewed the highlights of what the Committee had accomplished in 2017. Ms. Sutliff said many of the new provisions were in Version 3.4 of the Policies, while the new cybersecurity and research provisions would be in Version 3.5. She said the change regarding alerts was important, and Mr. Levin agreed that it brought tremendous value.

Ms. Sutliff noted that they had produced a legal framework regarding the sharing of sensitive health information. Ms. Eber said her office was reviewing one of the points in the document regarding the disaster access exception. In response to a question, Ms. Eber noted that there is no equivalent in the mental hygiene law of a public health or organ procurement exception, but certain disclosures may be covered under the required by law exception. Ms. Alfredo asked if OMH was issuing guidance regarding the changes to Mental Hygiene Law 33.13(d). Ms. Eber said they had written guidance under DSRIP regarding the applicability of the exception and a memo was provided to OMH facilities, but no further guidance was anticipated.

V. 2018 Policy Agenda Overview

Mr. Levin provided an overview of the 2020 roadmap goals. Ms. Shatzkin said it looked like a decision has been made to pursue opt-out. Ms. Sutliff said they were only seeking a broader discussion among stakeholders on this issue.

Mr. Check raised a question about QEs being able to access information held by public health registries maintained by the state or New York City. Mr. Karmel said birth records can only be seen by the state, but there are fewer restrictions on death and marriage records; he said that immunization records differ from vital records.

VI. Working Session: Disclosures to Non-SHIN NY Participants

Mr. Levin introduced the subject of revisions to the Policies on disclosures to non-participants. He said that this was the third time the Committee was addressing the issue and it was time to move ahead. Mr. Dworkowitz provided background on the purpose of the Policy changes and described the changes that had been made since the prior meeting.

Dr. Martin asked if there was a provision preventing re-disclosure of information received. Mr. Belfort said the draft policy stated that the recipient had to abide by the terms of consent, so such provision should hopefully address that concern.

Ms. Sutliff asked what type of agreement should be in place between the QE and the recipient. She asked whether the agreement would need to be a DURSA or the SHEIC agreement, or whether the draft policy, which gives the QE's flexibility on the form of the agreement, is sufficient. Mr. Check said he thought it would be fine if the policy specified minimum terms that must be set forth in the agreement.

Mr. Check noted that the DURSA differs from the draft policy in that under the DURSA, the recipient does not commit to using the data only for purposes allowed under the consent form. Mr. Allen said that if a hospital in Vermont issued a query for a purpose other than for treatment, then his QE would not respond to such query. Dr. Cohen said this model did not seem too different from the old days. Ms. Sutliff said if the draft policy listed the key elements of the agreement between the QE and the recipient, then the reference to the DURSA could be removed.

Mr. Belfort said if a hospital in Vermont receives data for treatment purposes, it may not be possible to prevent the hospital from also using that data for health care operations or payment purposes, and the issue is whether that troubles the Committee. Mr. Belfort said there is a distinction between HIPAA covered entities, who by law are only allowed to use the data for limited purposes, and others such as life insurers who are not subject to HIPAA. In the case of non-HIPAA covered entities the Committee has more of an interest in making sure the data is used only for purposes allowed in the consent. Mr. Belfort concluded that the DURSA may be sufficient if only covered entities signed the DURSA.

Ms. Alfredo noted there would still be a requirement to follow state law, such as re-disclosure warnings. Ms. Eber said the re-disclosure bar under the mental hygiene law continues to apply to a record until such time as a treating decision is based on that information, and then that

information becomes part of the record of the provider using it. Mr. Check said they should spell out the rule regarding re-disclosure warnings in the draft policy. Other Committee members disagreed.

Mr. Belfort said he had doubts about the agreement concept because no one would enforce the agreements. Dr. Martin said he believed this approach mirrors the paper-based process using a fax machine, and that when he receives records in his office, he does not sign an agreement, but he does receive a form letter discussing the need to comply with the law.

Ms. Sutliff said a small cohort of people would revisit this issue. Mr. Belfort said there were several different issues: 1) whether there is any interest in trying to restrict what the recipient does with the information, other than to say the recipient must comply with law; 2) whether an agreement is necessary or whether a warning is enough; and 3) whether the DURSA would be the default agreement.

Mr. Allen said the key use case was another HIE, which is what the DURSA is meant to address.

Mr. Check said the current proposed list of potential recipients includes VA facilities, but that should be expanded to include DOD facilities. Mr. Check said both of those organizations have very tight controls on how they use data so there is little concern about misuse of data. Dr. Martin noted that when it comes to narcotics lookup, some states think law enforcement can look through that data, but New York doesn't, and as a result New York does not have a compact with those other states. Dr. Martin questioned whether VA and DOD facilities might have a different interpretation of New York law. Mr. Kirkwood noted that those facilities are exempt from many parts of New York law such as the Public Health Law.

Mr. Check said that alerts are another important use case, and the SHIEC is actively supporting them among HIEs. Ms. Grey said this issue needs to be discussed in the context of a larger policy change and other issues brought up by the roadmap. Dr. Mead said it would be helpful to get an education on the bigger picture, since he did not know what the DURSA is. It was agreed that there would be a presentation on the national health information exchange initiatives at the next Policy Committee meeting that will help Committee members get a better understanding of the national efforts.

VII. Working Session: Audit Logs

Mr. Levin introduced the subject of changes to the audit log policies. Ms. Sutliff said that a small group, including Ms. Shatzkin and Mr. Allen, reviewed changes in the audit log policies to address disclosures. Mr. Dworkowitz explained that the Policies had previously been silent on whether disclosures need to be included in the audit logs, but the revisions would require logs to include disclosures, subject to limited exceptions regarding analytics and cases where the QE acted as a pipe for the transmission of the information. Mr. Boateng said he thought the provision in the Policies prohibiting changes to the logs is an important one, but he asked how the audit logs were being protected. Mr. Allen said this would be a HITRUST requirement.

Mr. Allen said that in regards to population health analytics, QEs could either aggregate data and then share with a participant that allows the participant to do the analytics, or QEs could perform the analytics themselves. Mr. Allen said that in the former case the audit log records the fact that the data is being shared with the participant. Ms. Shatzkin questioned the need to include in the audit log the creation of a data set before that data set has been used.

Mr. Levin asked why audits are required. Mr. Check responded that patients have a right to know who has seen their data.

Ms. Alfredo said the draft policy made sense to her. Mr. Levin asked if anyone objected to the proposal. Mr. Allen said the policy worked because it addresses both cases. Ms. Sutliff asked whether including the policy in an FAQ would be sufficient. Ms. Grey said that this policy change was intertwined with other policy changes being adopted so there should be a change to the Policies.

VIII. Charter Review

Mr. Levin presented the revised charter for the Policy Committee, and noted that under the revisions the terms of ex-officio members are not limited. Ms. Alfredo observed that professional associations are not listed in the document, but are listed as ex officio members on NYeC's website.

Dr. Martin said he did not see patients, advocacy groups, or consumers listed among the members of the Committee. Mr. Levin agreed that this should be articulated.

Mr. Check suggested the references to the Business and Operations Committee (BOC) should be aligned more closely to the language of the BOC charter.

IX. Closing

Mr. Levin reviewed the upcoming schedule for Policy Committee meetings. Mr. Levin thanked everyone and closed the meeting.