



**Department  
of Health**

Medicaid  
Redesign Team

# Value-Based Payment Patient Confidentiality: Issues and Considerations

Meeting 3: Finalization of Consensus Recommendations

November 22, 2016

# Agenda

Today's agenda includes the following:

Agenda Item	Time
Welcome & Introductions	1:00
Policy Framework	1:10
Review and Finalize Draft Recommendations	1:40
Conclusions	4:00

# Welcome & Introductions

# Policy Framework

Review of Patient Confidentiality Themes

# Policy Context

New York State's shift toward a Value Based Payment (VBP) delivery system is anticipated to enhance the value of services provided to the Medicaid population.



However, this move also raises additional data privacy challenges, especially in the context of New York State (NYS) law.



In this changing environment, providers may need additional data in order to be more proactive and successful in VBP while continuing to protect members' individual privacy needs. Policy clarification or regulatory updates may be needed to support these efforts.

# Policy Question

What amendments or reinterpretations, with respect to patient confidentiality considerations, can be implemented to allow for data sharing for the purposes of VBP?



## Implementation Mechanisms



State Legislation

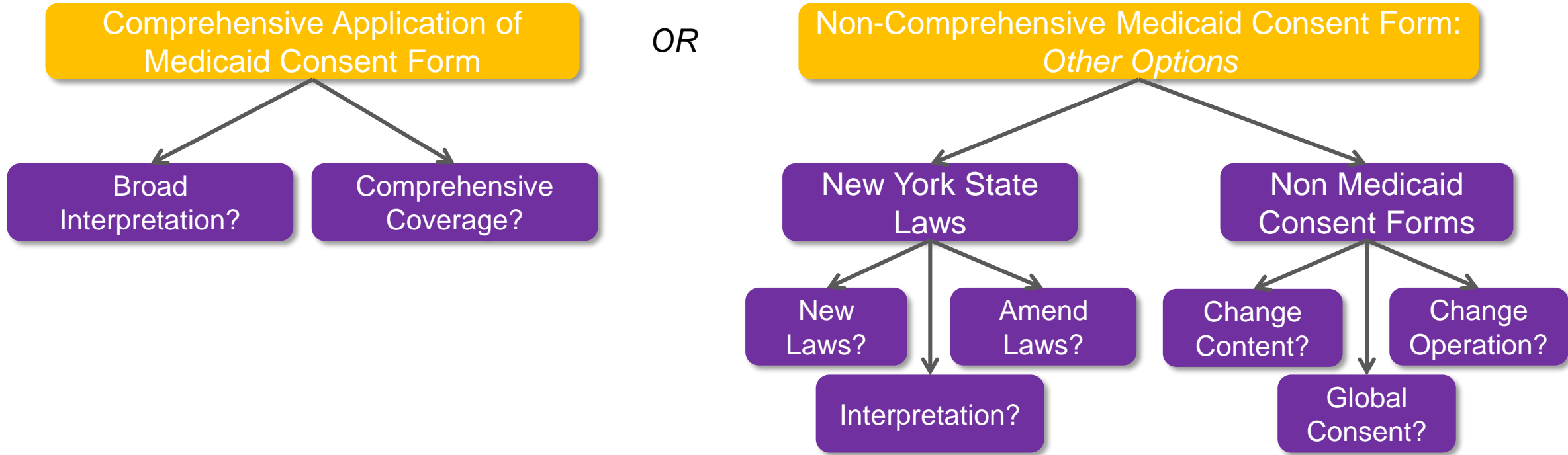
Model Contract

DOH Policy

Regulatory  
Changes

Other Modes

# Topics for Consideration



# Draft Recommendations

For facilitating health information sharing in New York State



# Draft Recommendation 1

DOH, working with OMH and other relevant agencies, should issue a new interpretation of State law to allow for sharing health information for analytics, alerts<sup>1</sup>, and other designated operations<sup>2</sup> purposes by clinical and non-clinical persons and entities, pursuant to contracts similar to a Business Associate Agreement (BAA) without affirmative consent from the patient.



Does it need State Agencies' Legal Approval?

Yes/No?



Considerations

Unknown



Implementation Mechanism

State Legislation/Model Contract/DOH Policy/Other?

<sup>1</sup> Alerts for the sharing of minimally necessary clinical information between providers

<sup>2</sup> Operations activities are defined according to HIPAA's healthcare operations part 1 and 2 definition: Quality assessment and improvement activities, population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting health providers and patients with information on treatment alternatives, and related functions that do not include treatment. Activities will also include reviewing the competence and qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, and conducting training, accreditation, certification, and credentialing programs and activities.

# Draft Recommendation 2

Create and implement an opt-in consent form for data sharing with all providers for PHI outside of minimally necessary health data, excluding alerts and analytics. Opt-in consent will include consent to access data for the purpose of care management by non-clinical providers supporting the provision of health care.



Does it need State Agencies' Legal Approval?

Yes



Considerations

- Patient Education
- Provider Compensation
- Standardization of the EHR process



Implementation Mechanism

State Legislation/Model Contract/DOH Policy/Other?

# Draft Recommendation 3

DOH, working with OMH and other relevant agencies, should issue a new interpretation of State law to allow for sharing health information for treatment purposes, including care coordination, without affirmative consent from the patient. An opt-in consent form should be created and implemented for data sharing with all providers for PHI outside of minimally necessary health data, excluding alerts and analytics. Opt-in consent will include consent to access data for the purpose of care management by non-clinical providers supporting the provision of health care.



**Does it need State Agencies' Legal Approval?**

Yes



**Considerations**

- Patient Education
- Provider Compensation
- Standardization of the EHR process



**Implementation Mechanism**

State Legislation/Model Contract/DOH Policy/Other?

# Draft Recommendation 4

Create and implement a single consent form for the purposes of data sharing in the Regional Health Information Organization (RHIO)/State Health Information Network of New York (SHIN-NY), Health and Recovery Plan (HARP), and Health Homes etc. Consent will be entered into the EHR.



Does it need State Agencies' Legal Approval?

Yes



## Considerations

- Clarify data sharing protocols for providers outside of RHIO/SHIN-NY.
- Assumes RHIO/SHIN-NY will be the gateway for consent.



## Implementation Mechanism

State Legislation/Model Contract/DOH Policy/Other?

# Draft Recommendation 5

DOH should work with relevant stakeholders on educational initiatives designed to (a) increase consumer awareness of how their health information may be used, with and without their affirmative consent, and protected, in connection with their care, including in VBP arrangements and integrated models and (b) increase consumer and provider awareness of the special rules allowing minors to consent to their own care under certain circumstances and to protect the privacy of any information generated from such care.



**Does it need State Agencies' Legal Approval?**

Yes



**Considerations**

- Technological feasibility
- Cost of technological requirements to segregate data



**Implementation Mechanism**

State Legislation/Model Contract/DOH Policy/Other?

<sup>1</sup> An individual under the age of eighteen (18) who is pregnant, the parent of a child, is married (PHL § 2504) or is in military service (PHL § 2781).

# Draft Recommendation 6

Grant mature minors<sup>1</sup> the authority to both opt-in and opt-out of sharing their PHI.



Does it need State Agencies' Legal Approval?

Yes



Considerations

- Technological feasibility
- Cost of technological requirements to segregate data



Implementation Mechanism

State Legislation/Model Contract/DOH Policy/Other?

<sup>1</sup> An individual under the age of eighteen (18) who is pregnant, the parent of a child, is married (PHL § 2504) or is in military service (PHL § 2781).

# Draft Recommendation 7

Create the mechanisms to allow individuals the right to suppress sharing of sensitive health information (i.e. mental health, HIV etc.) between providers via an opt-out.

 Does it need State Agencies' Legal Approval?

Yes



## Considerations

- There is concern as to how this would be technically implemented given current technological capabilities.






## Implementation Mechanism

State Legislation/Model Contract/DOH Policy/Other?

# Draft Recommendation 8

The State should grant access to a limited set of individuals and/or organizations to review vital statistics<sup>1</sup> for the purposes of health care operations as defined through HIPAA's healthcare operations part 1 and 2 definitions.

	<b>Does it need State Agencies' Legal Approval?</b>
	Yes/No?
	<b>Considerations</b>
	Unknown
	<b>Implementation Mechanism</b>
	State Legislation/Model Contract/DOH Policy/Other?

<sup>1</sup> Vital Statistics (VS) currently have unique restrictions which render them unusable with Medicaid members. New York state regulation 10 NYCRR 400.22 suggests that only state employees may access VS. There are no exceptions or consent processes available to providers, PPSs, and NYS contractors (there are limited exceptions for non-Medicaid members). VS include information on pregnancies, births, deaths, marriages and dissolutions, including trends over time and state population demographics.



# Additional Draft Recommendations?

# Thank You & Next Steps

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