



**Department  
of Health**

Medicaid  
Redesign Team

# Value-Based Payment Patient Confidentiality: Issues and Considerations

Meeting 4: Finalization of Consensus Recommendations

December 21, 2016

# Agenda

Today's agenda includes the following:

Agenda Item	Time
Welcome & Introductions	9:00
Policy Framework	9:10
Review and Finalize Draft Recommendations	9:20
Conclusions	12:00

# 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

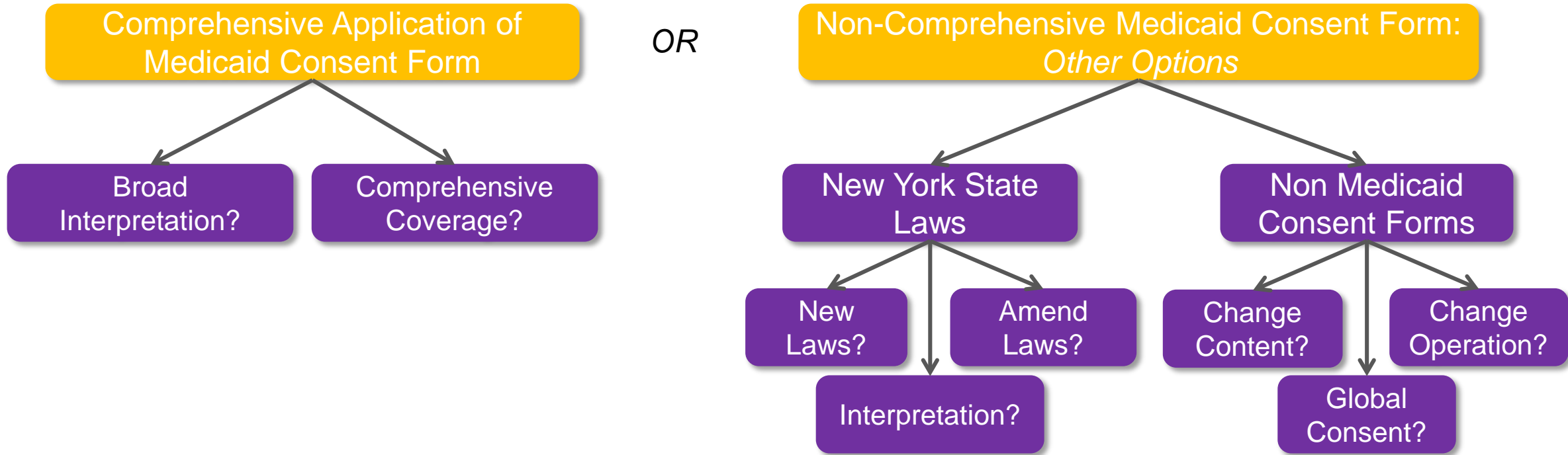
Model Contract

DOH Policy

Regulatory  
Changes

Other Modes

# Topics for Consideration



# Draft Recommendations

For facilitating health information sharing in New York State



# Draft Recommendation 5



**Step One:** Ongoing, robust educational curriculum is required (jointly developed with state and public stakeholders including consumers). All education will include:

- patient rights,
- meaning of consent,
- as well as the opt out process.

All materials will address special populations of concerns (E.g., Mental Health, HIV, and Substance Use Disorders). This information will be provided at variety of appropriate environments.

**Step Two:** Align state laws with HIPAA laws (without the need for affirmative consent required)

**Step Three:** Subject to technological capacity, a centralized consent repository should be created to track consent data. (this may require financial assistance from NYS). The creation of this reposition shall be done with input from stakeholders including providers.

**Step Four:** Subject to technological capacity, create an opt-in process for SUD population in accordance with 43 CFR Part 2 and any other required opt-in populations; as well as create an Opt-Out process for those whom elect.

*New recommendation  
post Meeting #3*



Legal Approval?

Legislative Action



Considerations

- Technological feasibility
- Cost of technological Point of Consent (PCP)
- Other



Implementation

State Legislation

# Draft Recommendation 6

New York State should prioritize and incentivize the development of the technical capabilities to facilitate recommendation 5 or any other recommendation where technical capabilities are in issue.



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?

# Draft Recommendation 7

Ensure that mature minors<sup>1</sup> have the right to both consent to their own medical care, including care coordination, and to consent to the sharing of medical information, or to decline to share such information without the consent of their parents.

 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> "A minor who is emotionally and intellectually mature enough to give informed consent and who lives under the supervision of a parent or guardian." New York Civil Liberties Union. <http://www.nyclu.org/files/thl.pdf>

# Draft Recommendation 8

Create the mechanisms to allow individuals the ability to exercise their 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 9

New York State and New York City Offices of Vital Statistics should grant access to a limited set of individuals and/or organizations to review vital statistics<sup>1</sup> for:

- Purposes of health care operations as defined through HIPAA's healthcare operations part 1 and 2 definitions
- To facilitate VBP bundles, including the maternity bundle
- Ascertain the death of enrollees

 Does it need State Agencies' Legal Approval?

Yes/No?



Considerations

Unknown



Implementation Mechanism

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.

*New recommendation  
post Meeting #3*

# Draft Recommendation 10

All payers should be required to send explanations of benefits only to the patient for whom the claim is made, at the address and in the manner the patient directs.

 Does it need State Agencies' Legal Approval?

Yes/No?



Considerations

Legal Restrictions?  
Administrative Capacities?



Implementation Mechanism

State Legislation/Model Contract/DOH Policy/Other?

# Appendix 1-Consensus and Eliminated Recommendations

Previously discussed during Meeting #3 on November 22, 2016

# Draft Recommendation 1

*Discussed and updated  
in Meeting #3*

DOH, working with OMH and other relevant agencies, should issue a new interpretation of State law to allow for the sharing of PHI for healthcare operations purposes pursuant to contracts similar to a BAA without the consent of the patient, provided that the patients have the right to opt out. Under this interpretation, a BAA arrangement would need to be sufficient for the sharing of clinical information for the purposes of analytics (to the extent permitted by HIPAA's exception for treatment and healthcare operations). Further, alerts can be sent out without consent for the patient, provided that they do not include disclosure of information protected through NYS and Federal law to the extent that no exception or exclusion exists.



Does it need State Agencies' Legal Approval?

Yes/No?



Considerations

Unknown



Implementation Mechanism

State Legislation/Model Contract/DOH Policy/Other?



# Draft Recommendation 2

*Discussed in Meeting #3;  
recommendation is no  
longer valid for inclusion*

~~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

*Discussed and updated  
in Meeting #3*

DOH, working with OMH and other relevant agencies should issue a broad interpretation of state law with regard to the sharing of health information for treatment, operation, and payment purposes, including care coordination, without affirmative consent from the patient. This includes access to data for the purposes of care management by non-clinical providers supporting the provision of health care. If necessary, statutory changes should be made that allow a consent process for the sharing of certain sensitive health information.



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

*Discussed and updated  
in Meeting #3*

To the extent that affirmative consent continues to be necessary for different categories of information, the state should make efforts towards the creation of a uniform consent form that is inclusive of plans and allows for bi-directional information sharing. Further, the group agreed that the consents should be inclusive of health care plans.

 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.



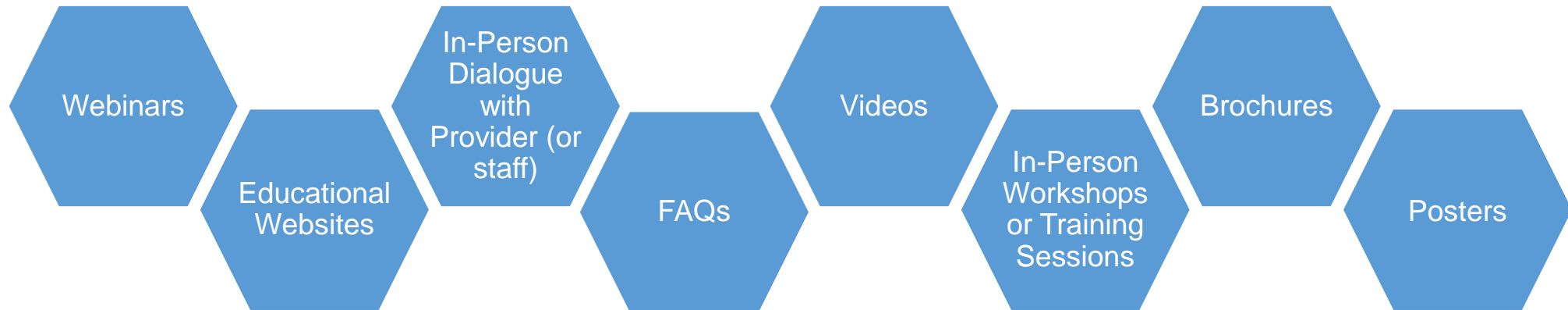
Implementation Mechanism

State Legislation/Model Contract/DOH Policy/Other?

# Appendix 2-Educational Background Information

# Consent Best Practices

- **Content:** consider the what, why, who, and how
- **Medium:** consider a multi-faceted approach



- **Delivery:** best practices revolve around consent education occurring just prior to, at, or after a provider visit; identify providers or staff members who patients trust to deliver consent education

# Consent Use Cases

- States have used various combinations of interactive websites, videos, posters, and written documents to support consent education.

healthlinkny PATIENTS PROVIDERS COMMUNITY

## Why Give Consent?

**Just Say "YES!"**

When you authorize your health provider to share your medical records securely through HealthlinkNY, all of your providers—and only your providers—will have a clear picture of your health, in one place.

HealthlinkNY is *safe* and *secure*. No more hassling with paperwork, and in an emergency, your complete record is accessible instantaneously.

- ✓ Better coordination of care between all of your health providers
- ✓ All your medications listed in one place
- ✓ In an emergency, provides life-saving information fast, anywhere in New York State.

Safe. Secure. Convenient. Saving on time and medical expenses.

*Coming soon: a patient portal, so you can access your own records online!*

**I GIVE CONSENT**

Allows medical providers to access your health records to enhance patient care.

\*Providers listed on the consent form only

2:18 / 2:49

**You have several choices for sharing your information**

Your Choices	Action you need to take	General Medical information	Mental health & HIV information
Share your medical information only	Do nothing	Available to all participating providers	Available only in medical emergencies
Share your mental health information, HIV information, or both	Fill out a consent form available from your participating provider or HealthInfoNet and consent to share mental health, HIV or both	Available to all participating providers	The type of information you choose will be available to all participating providers
Share your mental health information, HIV information, or both, with an individual provider	During your visit, tell your participating provider they have your consent to access your mental health, HIV/AIDS information or both	Available to all participating providers	Available to that individual provider during that visit. You will need to give permission next time you want them to have access
Remove all your medical information from HealthInfoNet	Fill out an opt-out form available from HealthInfoNet, your provider, or online at <a href="http://www.hinfonet.org/optout">www.hinfonet.org/optout</a>	All information is deleted from your record and will not be available to your participating providers, even in an emergency	All information is deleted from your record and will not be available to your participating providers, even in an emergency

# Consent Special Populations & Sensitive Health Information

- Use cases involve a separate consent form and education process for behavioral health.
- States have developed separate websites and educational tools for sensitive information sharing.
- Consider provider education for the purposes of providing consistent, relevant, and accurate patient education.

The screenshot shows the MDHHS website interface. At the top, there is a navigation bar with the MDHHS logo and a search bar. Below the navigation bar, there are several menu items: Assistance Programs, Adult & Children's Services, Safety & Injury Prevention, Keeping Michigan Healthy, Doing Business with MDHHS, and Inside MDHHS. The main content area displays the 'Michigan Behavioral Health Standard Consent Form' page. The page title is 'Michigan Behavioral Health Standard Consent Form'. The text on the page states: 'Sharing individual health information is an important part of delivering quality health care. Individuals and their health care providers share information with each other to diagnose health issues, make decisions on treatments, and coordinate care. Health care providers may share many kinds of health information with other providers for the purposes of payment, treatment, and health care operations. However, providers must receive specific consent to share an individual's health records containing certain types of information. In Michigan, federal and state laws require providers to receive consent to share information such as mental health records or information on treatment or referrals for alcohol and substance use.'

## GIVE YOUR HEALTHCARE PROVIDERS THE FULL PICTURE

No one knows your health better than you do! Give your healthcare providers the full picture by telling them what medicines you take, what specialists you see, and any health issues you may have. Allowing your healthcare providers to talk to each other is also a great way to keep them informed. They cannot do this without your permission.

### WHAT DO I NEED TO DO TO LET MY HEALTHCARE PROVIDERS TALK?

Ask your provider today! You may need to fill out a form allowing each of your providers to legally discuss your treatment with other providers. It's your choice to share your health information.

### WHAT ARE THE BENEFITS OF ALLOWING MY HEALTHCARE PROVIDERS TO TALK?

- ⇒ To help all of your providers get on the same page with your care.
- ⇒ To ensure they choose the best treatment for you.
- ⇒ To make sure they prescribe the best medicine for you based on other medicines you take or health issues you have.

### DO MY PROVIDERS ALWAYS NEED ME TO SIGN A DOCUMENT IN ORDER TO CONTACT EACH OTHER?

No. Under certain circumstances, your providers may need to discuss your care without your permission. Examples include:

- ⇒ If you are unconscious or unable to make choices for yourself.
- ⇒ If you are in danger of hurting yourself or others.

## Questions for Consideration

- ***What elements should be included in a multi-faceted approach to patient consent education?***
  - i.e. webinar, video, in-person dialogue, website, FAQ document etc.
- ***What is the trigger for initiating the patient education and consent process?***
  - i.e. Medicaid enrollment, provider visit etc.
- ***Who is responsible for delivering the patient consent education?***
  - i.e. provider office staff, provider (if so, what specialty?), CBO staff, HIE etc.
- ***What setting should the consent education be delivered in?***
  - i.e. patient's home, provider office waiting room, patient exam room etc.
- ***How should consent for special populations or for sensitive health information be handled?***
  - i.e. separate consent process, single consent that covers all populations & health information etc.



# 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).

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