

Sharing Data with Alliance for Better Health (Alliance) under the Incentive Program

Summary:

Under Alliance's Incentive Program, Medicaid Patient Lists have been requested from partners to enable the generation of analytics for improving health care quality and determining payment. For all Incentive Program participants (except Part 2 Providers), this act of sharing the list between the partner and Alliance is permissible under DSRIP, DOH, and HIPAA guidelines, and does not violate patient consent requirements.

How and why Alliance partners are permitted (and required) to share Medicaid data with Alliance:

Most partners participating in Alliance's Incentive Program are already contracted in one or more of Alliance's DSRIP projects. Therefore, these partners have:

- ✓ Signed a DOH required Business Associate Agreement (BAA) with Alliance
- ✓ Been added to Alliance's Data Exchange Application and Agreement (DEAA) filed with the DOH
- ✓ Been sharing Medicaid and/or uninsured member data with Alliance per their participation agreements in their respective project(s)

Providers joining Alliance for the first time will be required to sign an Alliance Participation Agreement and BAA prior to participating in the Incentive Program. The Alliance serves as a BA in two capacities; it is a BA of both the Medicaid Program and of its participating partners. It may receive member data in both capacities.

Data submission is required across all components of Alliance's Incentive Program. One such example is the required submission of a partner's Medicaid patient list to participate in the proxy measure portion of the Transformation Fund. This measure is part of Alliance's scope and function as a PPS within DSRIP. Within this scope, and as a Business Associate of the Medicaid Exchange Program, "the PPS may fund or directly provide services to patients in care management and coordination, outreach to Medicaid eligible members, patient education and other direct services" (DOH Guidance Documentation: Privacy and Data Sharing within DSRIP, June 5th 2017, pg. 1)

What about consent?"

Per HIPAA, a Covered Entity (CE) (including a provider who electronically bills Medicaid), may disclose PHI of Alliance attributed members without patient authorization or consent (beyond that in the Medicaid application) to a BA for administrative functions or to anyone for payment activities. Additionally, per the most recent DOH guidance, CEs, and Business Associates (BA) (defined as entities, such as a PPS, who receive information on behalf of the CE for purposes of patient health care or administrative functions thereof, including payment activities), consent is not needed if following circumstances are satisfied:

- ✓ A BAA containing language that defines the data shared, the reason for sharing, data stream (CE to BA and BA to CE), and satisfactory assurances that PHI will be protected, is filed with the DOH;
- ✓ A DEAA is in place with the DOH listing the relationship between Alliance and partner organization;
- ✓ The data set shared is done so for DSRIP administrative, care, or payment purposes.



Because the Medicaid patient list is necessary for distribution of DSRIP Incentive funds to partners, sharing this data qualifies as a payment activity, and thereby, absolves the need for consent. Moreover, New York State law does not require consent to share PHI with an agent (in this case, Alliance) who has executed a BAA with all CE partners. (See June 5th Guidance, pages 3-4).

“What about non-attributed members?”

Under HIPAA, the Provider (as a CE) may disclose its entire data set (including non-attributed patients) to Alliance (as its BA) for business functions including determining which patients are attributed to Alliance, and which are not, an activity central to the Partners receiving payment from the Transformation Fund. In this case, Alliance can remove the non-attributed members from any information that it would use to distribute funds or would disclose to the Medicaid Exchange Program. As the Provider’s BA, Alliance can receive and use the entire data set (including non-attributed data) to aggregate performance data (non-PHI) and furnish it back to the Provider, when possible. This latter activity is further permissible under subsection F of its 2015 BAA filed with DOH for many of its partners, and may be included in future BAAs.