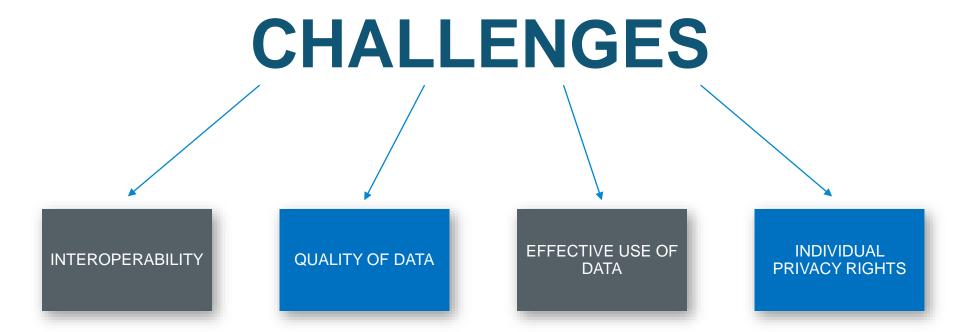


DATA IN VALUE-BASED HEALTH CARE

Reconciling Data Sharing and Privacy Protections

Challenges



VBHC data challenges

- IT support critical for Value-based Health Care ("VBHC")
 - Major investments in Electronic Health Records ("EHRs"), but have not met expectations
 - Supporting VBHC Initiatives
 - Need to build for 2020 and beyond
- Grappling with the interoperability millstone legal and operational challenges
- Seeking high quality data: rethinking the way we organize and support the collection, management and use of the data
 - Capturing and structuring data to support the shift to greater provider accountability

Quality of data

- Data not effectively captured or measured
- Need for:
 - Effective sharing of data with integrated care team
 - Use of data for benchmarking purposes
 - Support for evidenced-based care planning
 - Support for Clinically Integrated Networks ("CINs"), Risk-bearing Organizations ("RBOs"), Health Information Exchanges ("HIEs")

Diabetes as example

Range of clinical and supplemental needs

- Pre-admission / screening
- In hospital care
- Post acute care
- Physical Therapy
- Diet and exercise
- Patient Engagement through technology
- Ancillary Support Services

Privacy protections – the counterpoint

- Strong public policy preference: protecting patient privacy and data-use rights
- The conflict: desire to have benefits of big data but reluctance to share personal health information
- Fragmentation of these protections
 - Like EHRs, patient privacy protections built around the legacy fee-for-service health care structure and patient consents and authorizations

Array of data-use rights & privacy protections

- Legal hurdles
 - Authorizations and consents
 - Non-"treatment" uses and data aggregation
 - Patient compensation for data; blockchain technology?
 - Coordination of consents and authorizations across the care team
 - Authorization of future, unforeseen uses (de-identification, "blanket" consents)
 - Effective data security
- State-specific privacy laws (HIV, mental health, etc.)
- Ongoing compliance with evolving federal standards
 - Office for Civil Rights enforcement
 - Punitive shift in Federal Trade Commission enforcement

Balancing the values

- Balancing patient privacy legal protections with the data sharing and aggregation required for VBHC:
 - Trusted Exchange Framework ("TEFCA"), a partial answer
 - Pursuant to the 21st Century Cures Act
 - Attempts to create a single "on-ramp" for provider and others' data exchange
 - CINs
 - Difficult to establish
 - Still require substantial resources devoted to privacy
 - Complex to ascertain needed consents/authorizations
 - Business associate or covered entity status, and when?
 - New York State Medicaid Health Home program
 - Broad state-authored consent and authorization
 - Substantial compliance resources still required

Balancing the values

HIEs

- Exchanges of clinical information between disparate health systems
- Variety of models (e.g., EHR vendors, consumer controlled, geographic based)
- Still fundamentally rests upon a concept of consents and authorizations
 - Emerging trends
- United Health Group
 - Payor provided data analytics and technology
 - Supporting Medicare advanced Bundled Payments for Care Improvement model
- CVS Aetna
 - Wellness clinics and pharma services
 - Community-based hub

Conclusion

- The move to VBHC requires harmonizing competing goals:
 - (1) data sharing and aggregation necessary for VBHC
 - (2) the moral and legal imperatives of patient privacy and control

Thank you

ROPES & GRAY

Deborah Gersh

Partner
Deborah.Gersh@ropesgray.com
312.845.1307