



COMMUNITY
HEALTH CARE
ASSOCIATION
of New York State

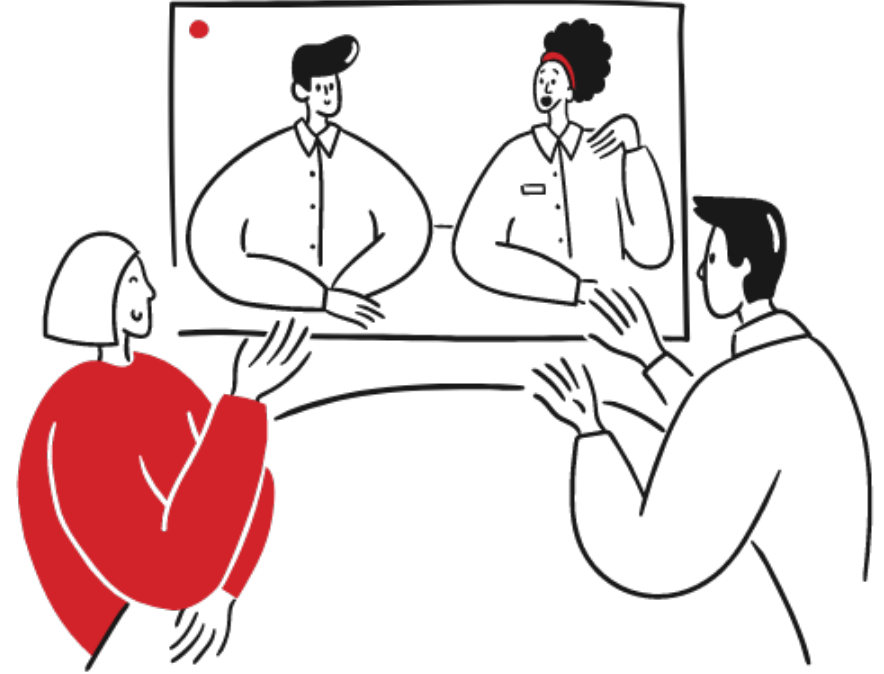
*A CHCANYS NYS-HCCN funded webinar
with Manatt Health*

Implications for the Use of Ambient Intelligence Tools in Clinical Settings

August 6, 2024

Zoom Guidelines

- You have been muted upon entry. Please respect our presenters and stay on mute if you are not speaking.
- Please share your questions in the chat. CHCANYS staff will raise your questions to our speakers and follow up as needed if there are unanswered questions.
- The session is being recorded and materials will be shared after the session.



New York State HCCN Objectives



Project Period 2022-2025

1 **Clinical Quality**

2 **Patient-Centered Care**

3 **Provider and Staff Wellbeing**

2022-2025 Project Period

- ✓ Patient Engagement
- ✓ Patient Privacy & Cybersecurity
- ✓ Social Risk Factor Intervention
- ✓ Disaggregated Patient-level Data (UDS+)
- ✓ Interoperable Data Exchange & Integration
- ✓ Data Utilization
- ✓ Leveraging Digital Health Tools
- ✓ Health IT Usability & Adoption
- ✓ Health Equity and REaL Data Collection*
- ✓ Improving Digital Health Tools- Closed Loop Referrals*

* - Applicant Choice Objective
Bold- Objective Carried over into 2022-2025





Randi Seigel, JD
Partner, Manatt Health






Use of Ambient Intelligence Tools in Clinical Settings

August 6, 2024

Speakers: Randi Seigel

Use of Ambient Intelligence Tools in Clinical Settings

There is no New York law or regulation addressing the use of ambient intelligence tools generally or in clinical settings, specifically. As a generally “one-party consent” state, New York regulates the recording of conversations under the NY Penal Law provisions on eavesdropping. As a result, a provider consenting to the use of ambient intelligence tools in their clinical encounters with patients would not violate New York’s eavesdropping laws.

Ambient Intelligence Tool	Definition
 Wiretapping	“The intentional overhearing or recording of a telephonic or telegraphic communication by a person other than a sender or receiver thereof, without the consent of either the sender or receiver, by means of any instrument, device or equipment.” ¹
 Mechanical overhearing of a conversation	“The intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment.” ²
 Intercepting or accessing of an electronic communication	“The intentional acquiring, receiving, collecting, overhearing, or recording of an electronic communication, without the consent of the sender or intended receiver thereof, by means of any instrument, device or equipment, except when used by a telephone company in the ordinary course...” ³

¹ N.Y. Penal Law § 250.05.

² N.Y. Penal Law § 250.00(2).

³ *Sharon v. Sharon*, 558 N.Y.S.2d 468 (Sup. Ct. 1990).

Until more substantial legislation is passed that addresses ambient intelligence or a body of case law emerges, clinical entities and providers are not required to obtain patient consent for the use of these tools under applicable law. However, CHCANYS members may wish implement procedures through which consent is obtained from both providers and/or their patients prior to a clinical encounter.



For Providers

- Consents can be most readily obtained as part of annual trainings (for existing providers) or during initial onboarding (for new providers).
- Obtain from each provider a blanket consent for the use of ambient intelligence tools in the provider's clinical encounters with patients would be the easiest to administer, collect, and maintain for CHCANYS members
- If providers consent to the use of ambient intelligence tools, such consent will satisfy New York's one-party consent rule to guard against potential violations of eavesdropping laws, to the extent applicable (i.e., patient consent to the use of the tool would not be required under current law).

The following is an example of patient disclosure form for the use of ambient intelligence tools. Unless a patient can truly opt-out of the use of such tool, we recommend that a patient disclosure be provided (as opposed to obtaining patient consent)



For Patients

- **A patient disclosure** may be most easily **provided during the intake process or when the nurse or provider firsts entering the exam room.**
- Patient disclosure form may consist of the following sections:
 - Definition of ambient intelligence tools
 - Description of how the specific ambient tool will be used
 - Instruction for patients to contact their provider (or someone else) if there are additional questions.





Randi Seigel
Partner,
Manatt Health



Jared Augenstein
Managing Director,
Manatt Health

This program does not constitute legal advice, nor does it establish an attorney-client relationship. Views expressed by presenters are strictly their own and should not be construed to be the views of Manatt or attributed to Manatt.

Appendix

Exhibit 1: Provider Consent to the Use of Ambient Intelligence Tools

[Provider Name] has approved the implementation and use of certain artificial intelligence (AI) enabled ambient listening (ambient intelligence) tools in the clinical setting to help support your clinical documentation practice. This tool is used to supplement and support you and not to replace your clinical judgement.

This consent form is to inform you of the implications of ambient intelligence and to obtain your informed consent to the use of ambient intelligence tools for each patient encounter you provide on behalf of [Provider Name]. [Provider Name]'s ambient intelligence vendor is [Vendor Name]. [Provider Name] has entered into a business associate agreement with such [Vendor Name] regarding the use of [Vendor Tool].

- Ambient intelligence tools offer administrative support to practitioners during patient encounters by using generative AI transcription technology to produce draft clinical notes and chart summaries in real-time. Ambient intelligence tools are intended to reduce the amount of time and work providers must devote to documenting the services they deliver.
- Natural language processing allows the ambient intelligence tools to transcribe and analyze provider-patient conversations as they occur, similar to how a scribe may draft notes for a provider during a patient encounter.
- Data collected using ambient intelligence tools may also help [Provider Name] identify applicable CPT/HCPCS codes for billing purposes and may be integrated into [Provider Name]'s electronic health record software.
- Ambient intelligence tools may have additional functionality that use generative AI technology specifically developed for healthcare uses to analyze a patient's history, genetic information, lifestyle factors, comorbidities, drug allergies and sensitivities, and current symptoms. The tools then compare the patient's information to large datasets to identify patterns, help providers identify and diagnose diseases and conditions, provide predictions as to the likelihood of complications or the success rate of a particular intervention, and/or create a draft personalized treatment plan for the patient.

You, the provider, **must** review and, as necessary, edit and revise the draft clinical note, summary or personalized treatment plan produced by ambient intelligence tools to ensure quality and accuracy before notes or summaries are incorporated into a patient's medical record. Ambient intelligence tools are aids to providers; they are not substitutes for a provider's exercise of professional judgment in making clinical decisions and performing other duties related to clinical care.

[Provider Name] will inform each patient that ambient intelligence tools may be used by [Provider Name]'s providers and will obtain their consent to such tools.

By signing below, you hereby consent to the use of [Vendor Name]'s ambient intelligence tool, [Tool Name], during each patient encounter for which you are a treating or assisting provider at [Provider Name], and you agree to comply with the prevailing standards of professional practice regarding the use of technology in furnishing care to patients.

Exhibit 2: Patient Informed Consent to the Use of Ambient Intelligence Tools

Dear Patient,

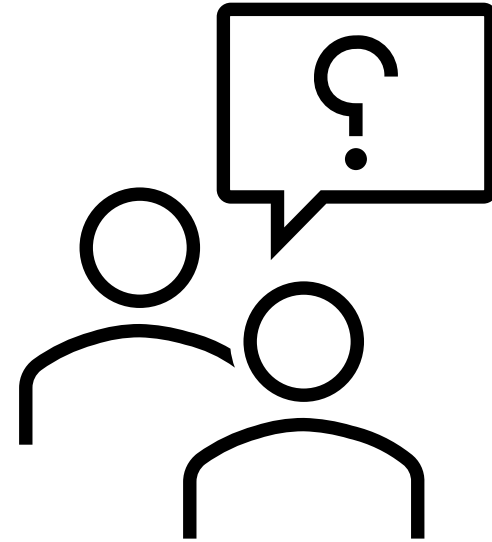
[Provider Name] is using certain artificial intelligence (AI) enabled ambient listening (ambient intelligence) tools at our locations to support our providers when providing care to you.

This consent provides you with information regarding ambient intelligence used in the clinical setting.

- ***What are Ambient Intelligence Tools?*** Ambient intelligence tools use AI to “listen” to clinical conversations during your provider visit and write draft notes or summaries of the visit in real-time – like as if there was another person in the room scribing your visit. This helps providers focus more on you, the patient, instead of entering information into the computer during your visit. Some ambient intelligence tools do other activities to help support providers to help them make diagnoses or decisions regarding your care and treatment.
- ***How Will Use of [Tool Name] Affect You?*** You will not know the ambient intelligence tool is being used; you will not interact with it. The ambient intelligence tool will be working behind the scenes to draft a draft clinical note or summary of your encounter for your provider to review after your visit. This allows the provider to focus more of their time and attention on you during your visit, rather than documenting what occurs during your visit.
- ***How Do Ambient Intelligence Tools Impact the Privacy and Security of Your Health Information?*** [Provider Name] assures you that your privacy is our utmost priority and that [Provider Name] keeps your health information private and secure,. [Provider Name] complies with all applicable laws, including without limitation the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA).
- ***Who Do You Contact with Additional Questions?*** If you have any questions about ambient intelligence, or this consent form, please ask the front desk or your provider.

I, _____ [Patient Name] _____, acknowledge the use of and agree to [Provider Name]’s use of ambient intelligence technology during my visits

Questions



Thank you!

We will share resources. Please contact us with any questions or concerns.

aepstein@chcanys.org

