Section 4 – Agency Oversight

Subsection 4.1 – Controls

Part c – Patient Related

Subpart (i) – Patient Confidentiality

(i) NYSHA complies with HITECH/HIPAA Privacy Rules which protect the privacy of individually identifiable health information; the HITECH/HIPAA Security Rule, which sets national standards for the security of electronic protected health information; and the confidentiality provisions of the Patient Safety Rule, which protect identifiable information being used to analyze patient safety events and improve patient safety.

(1) Privacy officer. The executive director shall have the responsibility to appoint a privacy officer. The privacy officer is responsible for the development and implementation of the policies and procedures required by these privacy policies. The privacy officer also serves as the person designated to receive complaints and who can provide further information about matters covered by the privacy notice.

(2) Maintenance and review of health care records.

(a) Except as noted below, it is the policy of the agency to allow individuals to inspect and obtain copies of their own health information and to request the amendment of their health information which is maintained by or at the agency. Additionally, the agency allows individuals to request information regarding disclosures of their health information made by the agency to third parties.

(b) Individuals will typically be denied access to information contained in psychotherapy notes, or to information that was obtained from a non-agency source under an agreement of confidentiality. The agency may otherwise choose to deny access to certain health information contained in the health record if, in the judgment of a licensed health care professional, such access could cause harm to the individual or to another person

(3) Amending information. The agency will allow an individual to amend information in their health record where the information in question was created by the agency and is inaccurate or incomplete. Otherwise, the agency may allow an individual to request an amendment of their health record, which may be reviewed by a licensed health care professional at the requestor's expense. Amendment requests should be directed to the agency's privacy officer, who will, after appropriate consultations and investigation, make a recommendation regarding the requested amendment.

(4) Information for other than treatment. Except for health care information released pursuant to a signed authorization or otherwise exempted by statute, the agency will, upon request, provide an individual with information regarding the release of their identifiable health information to third parties that was made for purposes other than treatment, payment, and healthcare operations as defined in HIPAA. Reasonable attempts will be made to provide this information in a format requested by the individual. Otherwise, it may be provided in any format mutually agreed upon.

(5) Requests in writing. Requests for access to health information, requests to amend health information, or requests for an accounting of disclosure of health information shall be in writing and shall be made to the agency's privacy officer. Initial responses to such requests typically will NYSHA, Inc. occur within thirty days of an access request or sixty days in the case of request for amendment or for an accounting of disclosure. In the event of denial, the response will include an explanation of the denial and will inform the individual of their right to and the process for appeal. The agency may, at its discretion, charge a requestor a fee not to exceed the actual cost of compiling, copying, and mailing requested information.

(6) Physical Security. Each healthcare record maintained by the agency in physical form will be kept appropriately secured in a locked location. Each electronic healthcare record maintained by the agency shall be kept in a secure environment and protected by appropriate electronic safeguards.

(7) Electronic devices. Electronic transmission devices, including computers, telefax machines, and other electronic equipment over which protected health information may be received or transmitted are to be maintained in secure sites and/or away from public access. Computer screens containing protected health information are to be inaccessible to public view. Computers that store protected health information are to be secured before being left unattended.

(8) Access by authorized personnel.

(a) Health information may only be accessed by authorized personnel. With the exception of the use and disclosure of health information directly related to treatment and to the extent practicable, access to health information by agency employees or other authorized personnel is restricted to the minimum necessary to execute their job responsibilities. It is the responsibility of each agency department, division or unit to identify those persons or classes of persons who are authorized to access, use or disclose health information and specifically to identify to what health information to which they may have access.

(b) Physical access to controlled areas and user accounts that provide access to protected health information are to be revoked upon the termination of an employee, student, or trainee or when others, such as contractors and vendors, no longer require access.

(9) Unauthorized access.

(a) The unauthorized access to or unauthorized use or disclosure of health information that exists in any agency health record may subject the responsible employee to disciplinary action up to and including termination of employment or suspension or expulsion from a student or trainee program. This extends to the unauthorized use or disclosure of health information that is overheard during the course of business or health information that is otherwise learned or secured by any agency employee, student or trainee by virtue of their employment with the agency.

(b) Agency departments that become aware of the unauthorized use or disclosure of protected health information that causes or reasonably could cause harm should immediately report the incident to the agency HIPPA officer. To the extent practicable,

the agency will attempt to minimize the known harmful effects and/or correct known instances of harm.

(c) All agency employees who may use, disclose, or have access to identifiable health information contained in any health record must, as a condition of continued employment or training, complete a training program that outlines employee responsibility and patient rights under the statutory privacy regulations contained in HIPAA

(10) Use and disclosure of health information. It is the policy of the agency that an individual's identifiable health information may only be used within the agency or disclosed to entities outside the agency after notification to and/or with the expressed permission of the individual, except in cases of emergencies or where specifically permitted or required by law. Access to health information maintained by the agency is limited to those who have a valid business or medical need for the information or otherwise have a right to know the information. With the exception of purposes related to treatment, access to an individual's health information or the use or disclosure of an individual's health information must, to the extent practicable, be limited to only that necessary to accomplish the intended purpose of the approved use, disclosure or request.

(11) Use for employment. Information maintained by the agency for purposes related to the administration of an agency health plan will not be used for employment related purposes, including but not limited to, annual evaluations, employee discipline, promotion, retention or termination. The agency strictly segregates functions related to health plan administration from employment decisions.

(12) Acknowledgment of receipt. An individual's health information may be used by the agency for treatment, payment, and healthcare operations as defined by HIPAA after the agency has provided to the individual a copy of these policies and procedures and has made a good faith effort to obtain an acknowledgment of its receipt. Additionally, the agency may use an individual's health information for other purposes or may disclose an individual's health information to external entities for other purposes upon obtaining a valid authorization from the individual giving permission for that stated use or disclosure. Further, the agency may use and disclose an individual's health information without prior permission or authorization where the health information has been sufficiently "de-identified," so as to hide the identity of the individuals, is part of a "limited data set" or for other uses where allowable by law.

(13) Emergency disclosure.

(a) Health information may be used or disclosed without an individual's acknowledgment of receipt of these policies and procedures in the event of an emergency or where a communications barrier makes prior permission or notification impossible.

(b) From time to time, the agency may disclose identifiable health information to other entities for use by the individual for treatment. Further, the agency may disclose identifiable health information to other entities to assist the individual in obtaining payment and, under limited circumstances, may disclose identifiable health information to other entities for purposes associated with healthcare operations.

(14) Marketing and public relations. It is the policy of the agency not to use or disclose identifiable health information for marketing or public relations purposes without the

authorization of the individuals to whom the health information relates. It is further the policy of the agency to allow individuals to choose not to have their identifiable health information used for such purposes.

(15) Notification and authorization.

(a) It is the policy of the agency that an individual's identifiable health information may typically only be used or disclosed pursuant to notification to and/or permissions granted by the individual, unless otherwise permitted or required by statute.

(b) The agency will provide individuals with a copy of these policies and procedures prior to the commencement of employment or training, unless an emergency or a communications barrier makes providing or obtaining these policies and procedures impossible or impracticable, and will make a good faith effort to obtain acknowledgment of its receipt.

(c) Except in emergency situations where patient care might be compromised, the agency will not use or disclose identifiable health information in a manner inconsistent with these policies and procedures.

(d) Only approved forms may be used for providing notification and no additions, deletions, or modifications may be made to the forms without the approval of the authorized agency HIPPA privacy officer.

(e) The agency allows individuals to request restrictions on the use and disclosure of their health information for treatment, payment, and healthcare operations. Following review by authorized agency personnel, the agency may choose not to agree to the requested restrictions. The agency will adhere, however, to any restrictions to which it agrees.

(f) Acknowledgments of receipt of these policies and procedures will be retained by the agency for a minimum of six years. Any agreed upon restrictions arising out of a notification will remain in effect until revoked by the individual or until the individual is notified by the agency that the agency will no longer honor the agreed upon restrictions.

(g) In the event the agency receives more than one authorization or permission from an individual that appear to be in conflict with each other, the agency will abide by the more restrictive patient permission, until the conflict is resolved. The agency will attempt to determine the true intentions the affected individual and thus resolve the conflicting permissions as soon as is practicable.

(h) An individual's health information may be used or disclosed by the agency for purposes other than treatment, payment, and health care operations, such as for research. Use and disclosure for such purposes requires a valid, signed authorization specifically detailing what information will be used or disclosed, how and by whom the information will be used or disclosed, and during what time period the information will be needed or a statement indicating there is no defined duration.

(i) Authorizations are valid only for the conditions outlined in the document and may not be used for any purpose or purposes not specifically stated and agreed to by the signing individual. The agency will allow an individual to revoke his or her authorization at

any time by submitting a written request. However, any such revocation shall not be retroactive to the extent that the agency has already relied and acted on a prior authorization

(16) Business associates.

(a) The agency discloses identifiable health information to other public or private entities with which the agency has contracted to provide services or a health plan. Health information provided to such a business associate must be pursuant to an assurance that the business associate, and its sub-contractors, will use the information only for the purposes intended, will restrict access to the information on a "need to know" basis only, and will otherwise take appropriate measures to safeguard the information in its possession. There must be a valid, signed business associate agreement in place before identifiable health information may be provided.

(b) Except to the extent that patient care might be compromised, the use or disclosure of health information by a business associate must comply with these policies and procedures. In addition, except to the extent that patient care might be compromised, the use and disclosure of an individual's health information by a business associate must comply with any restrictions beyond the scope of these policies and procedures which are requested and subsequently agreed to by the agency

(c) Business associate agreements must be in writing and must contain agency-approved HIPAA compliant language and authorized signatures.

(d) At any time the agency determines that a business associate has violated a material term or obligation under the agreement relating to HIPAA compliance, the agency shall seek to immediately remedy the breach or, if that is not possible, to alter or terminate the agreement. Violations may also be reported by the agency to the Secretary of the Department of Health and Human Services.

(e) It is the responsibility of each agency department, division, or operating unit contracting for services with third parties with whom identifiable health information will be shared to assure that valid business associate agreements are executed

(17) Electronic Data Interchange (EDI). It is the policy of the agency to timely install and utilize the standards promulgated under HIPAA for transactions and code sets as each standard or code set is updated. The HIPAA EDI transaction standards facilitate the communication between providers and health plans. These transaction standards improve efficiency by eliminating duplication and waste thus reducing the costs associated with efficient delivery of healthcare services and supplies. Code sets are used to facilitate the consistent and comprehensive view of complex information related to diagnoses and medical procedures. By using a standard code set, all data is represented universally, and understood by all parties.

(a) Transactions.

I. Transaction sets are the common exchanges of information between health care providers and insurers. HIPAA requires electronic transactions adherence to a common format that all parties can interpret.

II. Batch transactions are those types of transactions that occur multiple times, and do not require immediate response. For example, a claim is a batch transaction. A doctor typically sees several patients each day. At the end of the week or other predetermined period, claims to the insurance company may be sent in one group, or batch. Each individual claim does not need to be processed – or even acknowledged – immediately. Once the entire batch of claims is received, the transaction is acknowledged and the claims are processed.

III. Current HIPAA standard transaction sets for batch transactions:

Premium Payment	ASC X12N 820 (004010X061)
Eligibility	ASC X12N 834 (004010X095)
Payment Remittance Advice	ASC X12N 835 (004010X091)
Institutional Claims	ASC X12N 837 (004010X096)
Professional Claims	ASC X12N 837 (004010X097)
Dental Claims	ASC X12N 837 (004010X098)

IV. On-line transactions are those types of transactions that require an individual response. For example, a specialist referral request is an on-line transaction. A doctor typically refers patients to a specialist while the patient is in the doctor's office. The doctor sends a request to the insurance company for a referral and waits until he receives a response either approving or denying the referral request.

V. Current HIPAA standard transaction sets for on-line transactions:

Eligibility Inquiry	ASC X12N 270/271 (004010X092)
Additional Claim Information	ASC X12N 275 (004010X107)
Claims Status Inquiry	ASC X12N 276 (004010X093)
Request for Additional Information	ASC X12N 277 (004010X104)
Utilization Review Inquiry	ASC X12N 278/279 (004010X094)

(b) Standard code sets. By using a standard code set, all data is represented universally, and understood by all parties. Current HIPAA standard code sets:
Logical Observation Identifier Names and Codes (LOINC)
Health Care Financing Administration Common Procedural Coding System (HCPCS)
Home Infusion EDI Coalition (HEIC) Product Codes
National Drug Code (NDC)
National Council for Prescription Drug Programs (NCPDP)
International Classification of Diseases (ICD-9)
American Dental Association Current Dental Terminology (CDT-4)
Diagnosis Related Group Number (DRG)
Claim Adjustment Reason Codes
Remittance Remarks Codes

(18) Confidentiality and protective measures regarding HIV infection and AIDS.

(a) It is the policy of NYSHA that any information about anyone applying for services or admitted and receiving services, is to be held in confidence. Any information obtained or to be disclosed is to be done so with the understanding that the information is confidential and is to be maintained exclusively for the purposes of program planning and the provision of competent and humane care to that individual. While the requirements of this section address the particular issues of access to person-specific

HIV and AIDS information, it is the intent of NYSHA that no such information is to be discussed casually or capriciously. Such person-specific information should only be judiciously disclosed in accordance with law for the purposes of increasing the understanding of other care-givers about a person's needs and then only care-givers who have or will have responsibilities in addressing that person's needs.

(b) NYSHA and its employees, volunteers, and contract agents shall ensure the confidentiality of information in the possession of NYSHA concerning whether that person admitted for service or anyone proposed for admission has been the subject of an HIV-related test; or has HIV infection, HIV-related illness, or AIDS: or any information indicating a person's possible exposure to HIV.

(c) No one shall have access to HIV-related information unless he or she has access to clinical records in the ordinary course of business, has been trained in matters of confidentiality and related issues, and access to the HIV-related information is reasonably necessary under the following circumstances:

I. to provide for the appropriate care and treatment of a person as described in his or her program plan except when the sole purpose of accessing the information is to monitor or limit behaviors that could result in significant risk contacts; and the program planning team, in consultation with the person, has determined that he or she exhibits the capacity and willingness to manage his or her behaviors so that the monitoring or limitations are not necessary;

II. in connection with an investigation of an alleged violation of a person's rights, including discrimination or abuse;

III. to fulfill a specific statutory duty;

IV. in connection with a review of the quality of care rendered by a clinician; or

V. to determine eligibility for services or reimbursement of services by OPWDD or the medical assistance program (Medicaid).

(d) NYSHA shall protect the confidentiality of HIV-related information, whether in the form of records or computer data, which is maintained by or is transferred to authorized parties. Employees and volunteers shall be informed of and provided with the following written requirements:

I. HIV-related information shall not be examined, removed or copied by any person unless authorized under paragraph (iii) of this subdivision,10 NYCRR Part 63, or article 27-F of the Public Health Law.

II. HIV-related information shall not be disclosed to or discussed with any party unless such party is authorized to access such information pursuant to article 27-F of the Public Health Law, 10 NYCRR 63.5 or paragraph (iii) of this subdivision, and there is a need to do so.

III. The use of markers on the face of clinical files, list posted on walls, or other codes or displays for the sole purpose of identifying persons with HIV infection is prohibited.

IV. All disclosures, oral or written, except as identified in subparagraph (E) of this paragraph, shall be accompanied by this statement: "This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both."

V. All disclosures, oral or written, shall be noted in the clinical record except:

1. Only initial disclosures to insurance institutions must be noted.

2. Notation is not required for disclosure to agents or health care providers or health care facilities if:

i. the agent or health care provider is authorized to access medical or clinical records;

ii. the health care facility or health care provider is authorized to obtain the HIV-related information; and

iii. the agent or health care provider provides general or specific health care to the protected individual, or maintains or processes medical records for billing or reimbursement.

3. Notation is not required for persons engaged in quality assurance, program monitoring or evaluation, or for governmental agents acting pursuant to contract or law.

4. Confidential HIV-related information may be noted in a certificate of death, autopsy report or related documents prepared pursuant to Public Health Law, article 41 or other laws relating to documentation of cause of death.

5. A protected person shall be informed of disclosures of HIV information upon request of that person.

6. Confidential HIV-related information shall not be disclosable pursuant to Public Officers Law, article 6 (the Freedom of Information Law).

VI. Violation of these confidentiality provisions may lead to disciplinary action, including suspension or dismissal from employment, and civil or criminal liability.

(e) NYSHA shall implement and enforce a program that will prevent the transmission of HIV infection, should an employee be exposed to the virus. Such a program shall include requiring sound and appropriate health care practices in the care of all persons, including:

I. training for persons being served, staff, and volunteers, on the use of protective equipment, preventive practices, and circumstances that constitute significant risk exposure;

II. appropriate training, counseling, and supervision of persons regarding behaviors which pose a risk for HIV transmission. Contact notification, when appropriate, shall be conducted in accordance with Public Health Law, section 2782(4) and 10 NYCRR Part 63.7;

III. training, counseling, and supervision of persons who may be in high risk sexual or other contact situations with others;

IV. the use of accepted protective practices to prevent skin and mucous membrane exposure to blood, other body fluids, or other significant risk body substances;

V. the use of accepted preventive practices while handling instruments or equipment that may cause puncture injuries; and

VI. the provision, as appropriate, of personal protective equipment which is of appropriate quality and quantity

(f) NYSHA has implemented and enforces a program for the management of anyone who is exposed to blood, other body fluids or other significant risk body substances. See NYSHA's universal precautions policies and procedures for a detailed prescription) This program includes:

I. a system for voluntarily reporting all exposures thought to represent a circumstance for significant risk;

II. availability of services for evaluating the circumstances of a reported exposure and providing appropriate follow-up of anyone who has been exposed, which includes:

1. medical and epidemiological assessment of anyone who is the source of the exposure, where that source is known and available;

2. if epidemiologically indicated, HIV counseling and testing of the source as permitted under article 27-F of the Public Health Law. Where the HIV status is not known to anyone who has been exposed, disclosure can be made only with the express written consent of the source or pursuant to court order; and;

3. appropriate medical follow-up of anyone who has been exposed.

III. assurances for protection of confidentiality for those involved in reported exposures.

(g) NYSHA shall ensure that no person being served or anyone proposed for services is discriminated against, abused or otherwise treated adversely because of his or her status as one who is the subject of an HIV-related test, or who is thought to be, or who is, HIV infected. Discrimination includes, but is not limited to, the denial of appropriate

services, isolation or quarantine, or the restriction of rights as set forth in this Part, solely because the person or other party has or is thought to have HIV infection