

NOTICE OF PRIVACY PRACTICESⁱ

Effective Date: March, 2013

THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

We are required by law to protect the privacy of health information that may reveal your identity, and to provide you with a copy of this notice which describes the health information privacy practices of our program staff and affiliated health care providers that jointly provide health care services with our program. We are also required to notify you following breach of unsecured health information. A copy of our current Notice of Privacy Practices will always be posted in our reception area. You or your personal representative may also obtain a copy of this notice by accessing our website at www.mhacg.org or requesting a copy from our program staff.

If you have any questions about this notice or would like further information, please contact Michael H. Gelfand at (518) 828-4619, X317.

WHO WILL FOLLOW THIS NOTICE?

The agency provides health care to participants jointly with physicians and other health care professionals and organizations. The privacy practices described in this notice will be followed by:ⁱⁱ

- Any health care professional or other treatment provider who treats you at any of our locations;
- All employees, health care professionals, trainees, students or volunteers at any of our locations;
- All employees, health care professionals, trainees, students or volunteers at other providers we work with, hospitals or other entities that are part of an organized health care arrangement with the program;
- Any business associates of our agency (who are described further below).

PERMISSIONS DESCRIBED IN THIS NOTICE

This notice will explain the different types of permission we will obtain from you before we use or disclose your health information for a variety of purposes. The three types of permissions referred to in this notice are:

- A “general written consent,” which we must obtain from you in order to use and disclose your health information in order to treat or care for you, obtain payment for that treatment or care, and conduct our business operations. We must obtain this general written consent the first time we provide you with treatment or care. This general written consent is a broad permission that does not have to be repeated each time we provide treatment or care to you.
- An “opportunity to object,” which we must provide to you before we may use or disclose your health information for certain purposes. In these situations, you will have an opportunity to

object to the use or disclosure of your health information in person, over the phone, or in writing.

- A “written authorization,” which will provide you with detailed information about the persons who may receive your health information and the specific purposes for which your health information may be used or disclosed. We are only permitted to use and disclose your health information described on the written authorization in ways that are explained on the written authorization form you have signed. A written authorization will have an expiration date.

IMPORTANT SUMMARY INFORMATION

Requirement For Written Authorization. We will generally obtain your written authorization before using your health information or sharing it with others outside the program, including any use or disclosure, with certain exceptions, of psychotherapy notes, for marketing purposes or involving the sale of your protected health information. Except as described in this Notice, uses and disclosures will be made with your written authorization. You may also initiate the transfer of your records to another person by completing a written authorization form. If you provide us with written authorization, you may revoke that written authorization at any time, except to the extent that we have already relied upon it. To revoke an authorization, please write to the Program Director of the Program involved.

Exceptions To Written Authorization Requirement. There are some situations when we do not need your written authorization before using your health information or sharing it with others. They are:

- **Exception For Treatment, Payment, And Business Operations.** We will only obtain your general written consent one time to use and disclose your health information to treat or care for your condition, collect payment for that treatment or care, or run our business operations.ⁱⁱⁱ In some cases, we also may disclose your health information to another health care provider or payor for its payment activities and certain of its business operations.
- **Exception For Directory Information And Disclosure To Family And Friends Involved In Your Care.** We will ask you whether you have any objection to including information about you in our Facility Directory or sharing information about your health with your friends and family involved in your care.
- **Exception In Emergencies Or Public Need.** We may use or disclose your health information in an emergency or for important public needs. For example, we may share your information with public health officials at the New York State or city health departments who are authorized to investigate and control the spread of diseases.
- **Exception If Information Is Completely Or Partially De-Identified.** We may use or disclose your health information if we have removed any information that might identify you so that the health information is “completely de-identified.” We may also use and disclose “partially de-identified” information if the person who will receive the information agrees in writing to protect the privacy of the information.

How To Access Your Health Information. You generally have the right to inspect and copy your health information. For more information, please see page 10 of this notice.

How To Correct Your Health Information. You have the right to request that we amend your health information if you believe it is inaccurate or incomplete. .

How To Identify Others Who Have Received Your Health Information. You have the right to receive an “accounting of disclosures” which identifies certain persons or organizations to who we have disclosed your health information in accordance with the protections described in this Notice of Privacy Practices. Many routine disclosures we make will not be included in this accounting, but the accounting will identify many non-routine disclosures of your information.

How To Request Additional Privacy Protections. You have the right to request further restrictions on the way we use your health information or share it with others. We are generally not required to agree to the restriction you request, but if we do, we will be bound by our agreement.

How To Request More Confidential Communications. You have the right to request that we contact you in a way that is more confidential for you. We will try to accommodate all reasonable requests..

How Someone May Act On Your Behalf. You have the right to name a personal representative who may act on your behalf to control the privacy of your health information. Parents and guardians will generally have the right to control the privacy of health information about minors unless the minors are permitted by law to act on their own behalf.

How To Learn About Special Protections For HIV, Alcohol and Substance Abuse, Mental Health And Genetic Information. Special privacy protections apply to HIV-related information, alcohol and substance abuse treatment information, mental health information, and genetic information. Some parts of this general Notice of Privacy Practices may not apply to these types of information. If your treatment involves this information, you will be provided with separate notices explaining how the information will be protected. To request copies of these other notices now, please contact Michael H. Gelfand, Privacy officer at (518) 828-4619 X 317.^{iv}

How To Obtain A Copy Of This Notice. You have the right to a paper copy of this notice. You may request a paper copy at any time, even if you have previously agreed to receive this notice electronically. You or your personal representative may obtain a copy of this notice from our website at www.mhacg.org, or by requesting a copy from our program staff.

How To Obtain A Copy Of Revised Notice. We may change our privacy practices from time to time. If we do, we will revise this notice so you will have an accurate summary of our practices. The revised notice will apply to all of your health information. We will post any revised notice in our program reception area. You or your personal representative will also be able to obtain your own copy of the revised notice by accessing our website at www.mhacg.org, or requesting a copy from our program staff.^v The effective date of the notice will always be noted in the top right corner of the first page. We are required to abide by the terms of the notice that is currently in effect.

How To File A Complaint. If you believe your privacy rights have been violated, you may file a complaint with us or with the Secretary of the Department of Health and Human Services (HHS). To file a complaint with HHS, you may contact them at 200 Independence Avenue, SW, Washington, D.C. 20201, or at 1-877-696-6775. In addition, the Federal Relay Service can be contacted at 1-800-877-8339.

To file a complaint with us, please contact Michael H. Gelfand, Privacy Officer, 713 Union St., Hudson, NY 12534, (518) 828-4619 X317. *No one will retaliate or take action against you for filing a complaint.*

WHAT HEALTH INFORMATION IS PROTECTED

We are committed to protecting the privacy of information we gather about you while providing health-related services. Some examples of protected health information are:

- information indicating that you are a participant in the program or receiving treatment or other health-related services from our program;
- information about your health condition (such as a psychiatric diagnosis you may have received);
- information about health care products or services you have received or may receive in the future;
- information about rehabilitation or other counseling that you may be receiving;
- information about benefits you may receive under Medicaid; or
- information about your health care benefits under an insurance plan (such as whether a prescription is covered);

when combined with:

- demographic information (such as your name, address, or insurance status);
- unique numbers that may identify you (such as your social security number, your phone number, or your driver's license number); and
- other types of information that may identify who you are.

HOW WE MAY USE AND DISCLOSE YOUR HEALTH INFORMATION

1. Treatment, Payment And Business Operations^{vi}

With your general written consent,^{vii} we may use your health information or share it with others in order to provide you with treatment or care, obtain payment for that treatment or care, and run our business operations. In some cases, we may also disclose your health information for payment activities and certain business operations of another health care provider or payor. Below are further examples of how your information may be used and disclosed for these purposes.

Treatment.^{viii} We may share your health information with counselors and other treatment providers at the program who are involved in taking care of you, and they may in turn use that information to diagnose or treat you. A treatment provider at our agency may share your health information with another treatment provider inside our agency, or with a treatment provider at another health care facility, to determine how to diagnose or treat you. Your treatment provider may also share your health information with another treatment provider to whom you have been referred for further health care.

Payment.^{ix} We may use your health information or share it with others so that we may obtain payment for your health care services. For example, we may share information about you with Medicare, Medicaid, or your health insurance company in order to obtain reimbursement for treatment or care we have provided to you, or to determine whether it will cover your future treatment or care. Finally, we may share your information with other providers and payors for their payment activities.

Business Operations.^x We may use your health information or share it with others in order to conduct our business operations. For example, we may use your health information to evaluate the performance of our staff in caring for you, or to educate our staff on how to improve the care they provide for you. Finally, we may share your health information with other health care providers and payors for certain of

their business operations if the information is related to a relationship the provider or payor currently has or previously had with you, and if the provider or payor is required by federal law to protect the privacy of your health information.

Treatment Alternatives, Benefits And Services.^{xi} In the course of providing treatment to you, we may use your health information to contact you in order to recommend possible treatment alternatives or health-related benefits and services that may be of interest to you.^{xii}

Fundraising.^{xiii} To support our business operations, we may use demographic information about you, including information about your age and gender, when deciding whether to contact you or your personal representative to raise money to help us operate. We may also share this information with a charitable foundation that will contact you or your personal representative to raise money on our behalf. You have a right to opt out of receiving such communications.

Business Associates.^{xiv} We may disclose your health information to contractors, agents and other business associates who need the information in order to assist us with obtaining payment or carrying out our business operations. For example, we may share your health information with a billing company that helps us to obtain payment from Medicaid or your insurance company. Another example is that we may share your health information with an accounting firm or law firm that provides professional advice to us about how to improve our health care services and comply with the law. If we do disclose your health information to a business associate, we will have a written contract to ensure that our business associate also protects the privacy of your health information.

We can do all of these things if you have signed a general written consent form. Once you sign this general written consent form, it will be in effect indefinitely until you revoke your general written consent. You may revoke your general written consent at any time, except to the extent that we have already relied upon it. For example, if we provide you with treatment or care before you revoke your general written consent, we may still share your health information with your insurance company in order to obtain payment for that treatment or care. To revoke your general written consent, please write to the Program Director of the program involved..

2. Facility Directory/Family And Friends^{xv}

We may use your health information in, and disclose it from, our Facility Directory, or share it with family and friends involved in your care, without your written authorization. We will always give you an opportunity to object unless you are incapacitated when you first arrive at the program (in which case we will discuss your preferences with you as soon as you regain capacity).^{xvi} We will follow your wishes unless we are required by law to do otherwise.

Facility Directory.^{xvii} If you do not object, we will include [your name, your location in our facility and your religious affiliation]^{xviii} in our Facility Directory while you are a participant in the program. This directory information, except for your religious affiliation, may be released to people who ask for you by name. Your religious affiliation may be given to a member of the clergy, such as a priest or rabbi, even if he or she doesn't ask for you by name.

Family And Friends Involved In Your Care.^{xix} If you do not object, we may share your health information with a family member, relative, or close personal friend who is involved in your care or payment for that care. We may also notify a family member, personal representative or another person responsible for your care about your location and general condition here at the program, or about the

unfortunate event of your death. In some cases, we may need to share your information with a disaster relief organization that will help us notify these persons.

3. Emergencies Or Public Need^{xx}

We may use your health information, and share it with others, in order to treat you in an emergency or to meet important public needs.^{xxi} We will not be required to obtain your general written consent before using or disclosing your information for these reasons. We will, however, obtain your written authorization for, or provide you with an opportunity to object to, the use and disclosure of your health information in these situations when state law specifically requires that we do so.^{xxii}

Emergencies.^{xxiii} We may use or disclose your health information if you need emergency treatment or if we are required by law to treat you but are unable to obtain your general written consent. If this happens, we will try to obtain your consent as soon as we reasonably can after we treat you.^{xxiv}

Communication Barriers.^{xxv} We may use and disclose your health information if we are unable to obtain your consent because of substantial communication barriers, and we believe you would want us to treat you if we could communicate with you.^{xxvi}

As Required By Law.^{xxvii} We may use or disclose your health information if we are required by law to do so. We also will notify you of these uses and disclosures if notice is required by law.

Public Health Activities.^{xxviii} We may disclose your health information to authorized public health officials (or a foreign government agency collaborating with such officials) so they may carry out their public health activities. For example, we may share your health information with government officials that are responsible for controlling disease, injury or disability. We may also disclose your health information to a person who may have been exposed to a communicable disease or be at risk for contracting or spreading the disease if a law permits us to do so.

Victims Of Abuse, Neglect Or Domestic Violence.^{xxix} We may release your health information to a public health authority that is authorized to receive reports of abuse, neglect or domestic violence. For example, we may report your information to government officials if we reasonably believe that you have been a victim of such abuse, neglect or domestic violence. We will make every effort to obtain your permission before releasing this information, but in some cases we may be required or authorized to act without your permission.

Health Oversight Activities.^{xxx} We may release your health information to government agencies authorized to conduct audits, investigations, and inspections of our facility. These government agencies monitor the operation of the health care system, government benefit programs such as Medicare and Medicaid, and compliance with government regulatory programs and civil rights laws.

Product Monitoring, Repair And Recall.^{xxxi} We may disclose your health information to a person or company that is regulated by the Food and Drug Administration for the purpose of: (1) reporting or tracking product defects or problems; (2) repairing, replacing, or recalling defective or dangerous products; or (3) monitoring the performance of a product after it has been approved for use by the general public.

Lawsuits And Disputes.^{xxxii} We may disclose your health information if we are ordered to do so by a court or administrative tribunal that is handling a lawsuit or other dispute.

Law Enforcement.^{xxxiii} We may disclose your health information to law enforcement officials for the following reasons:^{xxxiv}

- To comply with court orders or laws that we are required to follow;
- To assist law enforcement officers with identifying or locating a suspect, fugitive, witness, or missing person;
- If you have been the victim of a crime and we determine that: (1) we have been unable to obtain your general written consent because of an emergency or your incapacity; (2) law enforcement officials need this information immediately to carry out their law enforcement duties; and (3) in our professional judgment disclosure to these officers is in your best interests;
- If we suspect that your death resulted from criminal conduct; or
- If necessary to report a crime that occurred on our property.

To Avert A Serious And Imminent Threat To Health Or Safety.^{xxxv} We may use your health information or share it with others when necessary to prevent a serious and imminent threat to your health or safety, or the health or safety of another person or the public. In such cases, we will only share your information with someone able to help prevent the threat. We may also disclose your health information to law enforcement officers if you tell us that you participated in a violent crime that may have caused serious physical harm to another person (unless you admitted that fact while in counseling), or if we determine that you escaped from lawful custody (such as a prison or mental health institution).

National Security And Intelligence Activities Or Protective Services.^{xxxvi} We may disclose your health information to authorized federal officials who are conducting national security and intelligence activities or providing protective services to the President or other important officials.

Inmates And Correctional Institutions.^{xxxvii} If you later become incarcerated at a correctional institution or detained by a law enforcement officer, we may disclose your health information to the prison officers or law enforcement officers if necessary to provide you with health care, or to maintain safety, security and good order at the place where you are confined. This includes sharing information that is necessary to protect the health and safety of other inmates or persons involved in supervising or transporting inmates.^{xxxviii}

Workers' Compensation. We may disclose your health information for workers' compensation or similar programs that provide benefits for work-related injuries.^{xxxix}

Coroners, Medical Examiners And Funeral Directors.^{xl} In the unfortunate event of your death, we may disclose your health information to a coroner or medical examiner. This may be necessary, for example, to determine the cause of death. We may also release this information to funeral directors as necessary to carry out their duties.

Organ And Tissue Donation.^{xli} In the unfortunate event of your death, we may disclose your health information to organizations that procure or store organs, eyes or other tissues so that these organizations may investigate whether donation or transplantation is possible under applicable laws.

Research.^{xlii} In most cases, we will ask for your written authorization before using your health information or sharing it with others in order to conduct research. However, under some circumstances, we may use and disclose your health information without your written authorization if we obtain approval through a special process to ensure that research without your written authorization poses minimal risk to your privacy. Under no circumstances, however, would we allow researchers to use your name or identity publicly. We may also release your health information without your written authorization to people who are preparing a future research project, so long as any information identifying you does not leave our facility. In the unfortunate event of your death, we may share your health information with people who are conducting research using the information of deceased persons, as long as they agree not to remove from our facility any information that identifies you.

4. Completely De-identified Or Partially De-identified Information.^{xliii}

We may use and disclose your health information if we have removed any information that has the potential to identify you so that the health information is “completely de-identified.” We may also use and disclose “partially de-identified” health information about you if the person who will receive the information signs an agreement to protect the privacy of the information as required by federal and state law. Partially de-identified health information will *not* contain any information that would directly identify you (such as your name, street address, social security number, phone number, fax number, electronic mail address, website address, or license number).

5. Incidental Disclosures^{xliiv}

While we will take reasonable steps to safeguard the privacy of your health information, certain disclosures of your health information may occur during or as an unavoidable result of our otherwise permissible uses or disclosures of your health information. For example, during the course of a treatment session, other consumers in the treatment area may see, or overhear discussion of, your health information.

YOUR RIGHTS TO ACCESS AND CONTROL YOUR HEALTH INFORMATION

We want you to know that you have the following rights to access and control your health information. These rights are important because they will help you make sure that the health information we have about you is accurate. They may also help you control the way we use your information and share it with others, or the way we communicate with you about your medical matters.

1. Right To Inspect And Copy Records^{xlv}

You have the right to inspect and obtain a copy of any of your health information that may be used to make decisions about you and your treatment for as long as we maintain this information in our records. This includes medical and billing records. To inspect or obtain a copy of your health information, please submit your request to the Program Director.^{xlvi} If you request a copy of the information, we may charge a fee for the costs of retrieving, copying, mailing or supplies we use to fulfill your request. The standard fee for copying is \$0.75 per page and must generally be paid before or at the time we give the copies to you.^{xlvii} The standard fee for retrieving and emailing records is \$_____ per patient and must generally be paid before the records are emailed to you. We will respond to your request for inspection of records within 10 days. We ordinarily will respond to requests for copies within 30 days. If we need additional

time to respond to a request for copies, we will notify you in writing within the time frame above to explain the reason for the delay and when you can expect to have a final answer to your request.^{xlvi}

Under certain very limited circumstances, we may deny your request to inspect or obtain a copy of your information. If we do, we will provide you with a summary of the information instead.^{xli} We will also provide a written notice that explains our reasons for providing only a summary, and a complete description of your rights to have that decision reviewed and how you can exercise those rights. The notice will also include information on how to file a complaint about these issues with us or with the Secretary of the Department of Health and Human Services. If we have reason to deny only part of your request, we will provide complete access to the remaining parts after excluding the information we cannot let you inspect or copy.

2. Right To Amend Recordsⁱ

If you believe that the health information we have about you is incorrect or incomplete, you may ask us to amend the information. You have the right to request an amendment for as long as the information is kept in our records. To request an amendment, please write to the Program Director. Your request should include the reasons why you think we should make the amendment. Ordinarily we will respond to your request within 60 days. If we need additional time to respond, we will notify you in writing within 60 days to explain the reason for the delay and when you can expect to have a final answer to your request.

If we deny part or all of your request, we will provide a written notice that explains our reasons for doing so. You will have the right to have certain information related to your requested amendment included in your records. For example, if you disagree with our decision, you will have an opportunity to submit a statement explaining your disagreement which we will include in your records. We will also include information on how to file a complaint with us or with the Secretary of the Department of Health and Human Services. These procedures will be explained in more detail in any written denial notice we send you.

3. Right To An Accounting Of Disclosuresⁱⁱ

You have a right to request an “accounting of disclosures” which identifies certain other persons or organizations to whom we have disclosed your health information in accordance with applicable law and the protections afforded in this Notice of Privacy Practices. An accounting of disclosures does not describe the ways that your health information has been shared within and between the program and the facilities listed at the beginning of this notice, as long as all other protections described in this Notice of Privacy Practices have been followed.^{lii}

An accounting of disclosures also does not include information about the following disclosures:

- Disclosures we made to you or your personal representative;
- Disclosures we made pursuant to your written authorization;
- Disclosures we made for treatment, payment or business operations;
- Disclosures made from our facility directory;
- Disclosures made to your friends and family involved in your care or payment for your care;
- Disclosures that were incidental to permissible uses and disclosures of your health information (for example, when information is overheard by another consumer passing by);
- Disclosures for purposes of research, public health or our business operations of limited portions of your health information that do not directly identify you;

- Disclosures made to federal officials for national security and intelligence activities; or
- Disclosures about inmates to correctional institutions or law enforcement officers.

To request an accounting of disclosures, please write to the program director. Your request must state a time period within the past six years for the disclosures you want us to include. For example, you may request a list of the disclosures that we made between January 1, 2010 and January 1, 2011. You have a right to receive one accounting within every 12 month period for free. However, we may charge you for the cost of providing any additional accounting in that same 12 month period. We will always notify you of any cost involved so that you may choose to withdraw or modify your request before any costs are incurred.

Ordinarily we will respond to your request for an accounting within 60 days. If we need additional time to prepare the accounting you have requested, we will notify you in writing about the reason for the delay and the date when you can expect to receive the accounting. In rare cases, we may have to delay providing you with the accounting without notifying you because a law enforcement official or government agency has asked us to do so.

4. Right To Request Additional Privacy Protections^{liii}

You have the right to request that we further restrict the way we use and disclose your health information to provide you with treatment or care, collect payment for that treatment or care, or run our business operations. You may also request that we limit how we disclose information about you to family or friends involved in your care. For example, you could request that we not disclose information about a surgery you had. To request restrictions, please write to the Program Director. Your request should include (1) what information you want to limit; (2) whether you want to limit how we use the information, how we share it with others, or both; and (3) to whom you want the limits to apply.

We are generally not required to agree to your request for a restriction, except we must agree to your request to restrict the information we provide to your healthcare plan if the disclosure is not required by law and the information relates to health care being paid in full by someone other than the health plan, and in some cases the restriction you request may not be permitted under law. *However, if we do agree (either voluntarily or as required by law), we will be bound by our agreement unless the information is needed to provide you with emergency treatment or comply with the law.* Once we have agreed to a restriction, you have the right to revoke the restriction at any time. Under some circumstances, we will also have the right to revoke the restriction as long as we notify you before doing so; in other cases, we will need your permission before we can revoke the restriction.

5. Right To Request Confidential Communications^{liv}

You have the right to request that we communicate with you or your personal representative about your medical matters in a more confidential way by requesting that we communicate with you by alternative means or at alternative locations. To request more confidential communications, please write to the Program Director of the program involved. *We will not ask you the reason for your request, and we will try to accommodate all reasonable requests.* Please specify in your request how you or your personal representative wish to be contacted, and how payment for your health care will be handled if we communicate with your personal representative through this alternative method or location.^{lv}

ACKNOWLEDGMENT AND CONSENT

By signing below, I acknowledge that I have been provided a copy of this Notice of Privacy Practices and have therefore been advised of how health information about me may be used and disclosed by the program and the facilities listed at the beginning of this notice, and how I may obtain access to and control this information. I also acknowledge and understand that I may request copies of separate notices explaining special privacy protections that apply to HIV-related information, alcohol and substance abuse treatment information, mental health information, and genetic information.^{lvi}

Signature of Program Participant or Personal Representative

Print Name of Program Participant or Personal Representative

Date

Description of Personal Representative's Authority

By signing below, I consent to the use and disclosure of my health information to treat me and arrange for my medical care, to seek and receive payment for services given to me, and for the business operations of the agency, its staff, and the facilities listed at the beginning of this notice.^{lvii}

Signature of Program Participant or Personal Representative

Print Name of Program Participant or Personal Representative

Date

Description of Personal Representative's Authority

ⁱ The primary section of the HIPAA Privacy Rule governing this notice is 45 C.F.R. § 164.520. That section, however, references many others, which will be identified in endnotes throughout this notice. A program must provide the notice to participants no later than the first service delivery, including service delivered electronically. 45 C.F.R. § 164.520(c)(2). In an emergency treatment situation, the program must provide the notice as soon as reasonably practicable after the emergency treatment situation has ended. See *id.* The program must make the notice available for consumers or their personal representatives to request and take with them, and must post the notice in a “clear and prominent” location where it is reasonable to expect consumers will be able to read the notice. *Id.* If the notice is revised, the program must make the revised notice available upon request. *Id.* Finally, if a program maintains a web site that provides information about its services, the program must “prominently” post the notice on its web site and make the notice available electronically through the web site. 45 C.F.R. § 164.520(c)(3). A program may provide the notice to a participant or participant’s personal representative by email provided that the participant or personal representative agrees to electronic notice and such agreement has not been withdrawn (in which case a paper notice must be provided if requested). See *id.*

ⁱⁱ This Notice of Privacy Practices has been written as a joint notice that will cover uses and disclosures of protected health information by an organized health care arrangement. An organized health care arrangement includes independent health care professionals, clinicians and contracted technicians who provide care within a clinically integrated program setting even though these persons are not technically employees of the program. It also includes persons or organizations outside the program who jointly engage in risk-sharing, quality assurance, or peer review activities with the program. We recommend that, when appropriate, a program use a joint Notice of Privacy Practices so that the program and its non-employed health care provider staff each will not be required to provide the consumer with, and make a good faith effort to obtain the consumer’s written acknowledgement of receipt of a Notice of Privacy Practices. A program should be aware, however, that providing consumers with a joint notice of privacy practices may create some expectation by consumers that the persons and facilities covered by the joint notice will coordinate their responses to consumer requests made pursuant to the consumers’ rights provisions (e.g., access, amendment, accounting, and requests for restrictions or for confidential communications). Although the Privacy Rule does not itself require a joint response by members of an organized health care arrangement, participants in the joint notice should be prepared, because of consumer expectations, to notify each other of such consumer requests or, alternatively, make clear in this joint notice that the consumer will need to independently exercise these privacy rights with each of the members of the organized health care arrangement. A program should assess and consult with legal counsel regarding whether it is part of an organized health care arrangement and modify this Notice of Privacy Practices accordingly.

ⁱⁱⁱ Although the August 2002 modifications to the Privacy Rule removed the written consent requirement as a matter of federal law, Ropes & Gray has learned through communication with contacts at the New York State Department of Health (“NYSDOH”) that New York laws granting individuals a general right to privacy and confidentiality with respect to their health information are interpreted by NYSDOH as placing an obligation on health care providers, such as the agency, to obtain a consumer’s written consent before using or disclosing protected health information for treatment, payment and health care operations. Our understanding is that NYSDOH does not take the position that this written consent must be obtained before an appointment can be scheduled or a prescription can be filled, and that NYSDOH will permit health care providers to combine the written consent required by state law with a written acknowledgment of receipt of the Notice of Privacy Practices required by the Privacy Rule. In light of this information, the sample policies and forms prepared by Ropes & Gray have been drafted to include the New York state law written consent requirement for treatment, payment and health care operations. Programs should continue to follow current law and practice with respect to procedures that must be followed when a consumer refuses to sign a written consent to use and disclose information for treatment, payment or health care operations, or when such written consent cannot be obtained for other reasons (e.g., in emergency treatment situations or when a program participant is incapacitated). In the event that NYSDOH changes its position or provides some guidance regarding this requirement, programs should modify the policies and forms accordingly.

^{iv} We have provided separate privacy notices as exhibits in the HIPAA guides we prepared addressing privacy protections for confidential HIV-related information, alcohol and substance abuse treatment information, and mental health information. If a program deals with any of these types of information on a regular basis, it may wish to incorporate these separate privacy notices into this Notice of Privacy Practices.

^v If a covered entity intends to restrict its uses and disclosures beyond what is required by the Privacy Rule and applicable state law, it may modify this Notice of Privacy Practices to reflect those more restrictive practices. Doing so may be attractive to consumers seeking more protective arrangements with their health care providers. However, under the Privacy Rule, a covered entity may not commit to any self-restrictive practice that prevents disclosures required by law, or required to avert a serious threat to health or safety. Moreover, if there is any change in the covered entity's self-imposed restrictions, the covered entity will be required to revise its policies and procedures, and its Notice of Privacy Practices, in accordance with 45 C.F.R. §§ 164.530(i) and 164.520(b)(2).

^{vi} See 45 C.F.R. § 164.506.

^{vii} See endnote 4.

^{viii} 45 C.F.R. § 164.506(c)(1)-(2).

^{ix} 45 C.F.R. § 164.506(c)(1)&(3).

^x 45 C.F.R. § 164.506(c)(1)&(4).

^{xi} 45 C.F.R. § 164.520(b)(1)(iii)(A).

^{xii} The Privacy Rule would also permit a covered entity to use an individual's protected health information in order to contact the individual with appointment reminders. See 45 C.F.R. 164.520(b)(1)(iii)(A). This option has not been included because most programs will not need to contact participants with appointment reminders.

^{xiii} 45 C.F.R. § 164.520(b)(1)(iii)(B).

^{xiv} 14 45 C.F.R. §§ 164.502(e), 164.504(e).

^{xv} See 45 C.F.R. § 164.510.

^{xvi} Under the Privacy Rule, covered entities are also permitted in emergency treatment circumstances to use and disclose an individual's protected health information for facility directory purposes without the individual's verbal agreement. See 65 Fed. Reg. 82,522 (Dec. 28, 2000). As an example, the preamble to the Privacy Rule explains that the individual's agreement is not required if the individual is so seriously injured that asking permission to use his or her information in the facility directory would delay treatment and jeopardize the individual's health. See *id.* This exception has not been included in this Notice of Privacy Practices because most program participants will not be admitted under such duress or medical emergency. Although a medical emergency may arise at some later point during a program participant's presence in the program, a facility directory form should already be on file through ordinary admittance procedures.

^{xvii} 45 C.F.R. § 164.510(a).

^{xviii} If the program maintains a facility directory, this section will need to be revised to reflect what information is contained in, and disclosed from, that directory. The bracketed information represents the protected health information that may be used or disclosed for facility directory purposes without written authorization. See 45 C.F.R. § 164.510(a)(1). The Privacy Rule would also permit a covered entity to include in the facility directory an individual's general condition in terms that do not communicate specific medical information about the individual (*e.g.*, fair, stable, or critical). See 65 Fed. Reg. at 82,521 (Dec. 28, 2000). This type of directory information would more likely be applicable to general hospitals treating patients in emergency situations than to programs providing long-term care to participants.

^{xix} 45 C.F.R. § 164.510(b).

^{xx} We note that this section of the Notice of Privacy Practices should cover the most important New York laws that survive preemption.

^{xxi} In addition to the disclosures listed in the text, a covered entity is permitted under the Privacy Rule to make the following disclosures without written authorization or verbal agreement. We have not included these disclosures in the text of this Notice of Privacy Practices because in most cases they will not be applicable to programs. Each program should evaluate its own practices, however, to determine whether any of these disclosures may be applicable. See 45 C.F.R. §§ 164.512(k)(1), 164.512(k)(4), 164.512(k)(5).

- **Military And Veterans.** Covered entities may disclose protected health information about individuals who are in the armed forces to appropriate military command authorities, including a foreign military command authority, for activities they deem necessary to carry out their military mission.
- **Department of Defense or Transportation.** A health care provider that is a component of the Department of Defense or Transportation may disclose an individual's health information to the Department of Veteran Affairs upon the individual's discharge from military service so that the Department of Veteran Affairs may determine if the individual is eligible for certain benefits.
- **Department of Veteran Affairs.** A health care provider that is a component of the Department of Veterans Affairs may use or disclose an individual's health information to determine whether he or she is eligible for certain benefits. A program that is a component of the Department of Veterans Affairs should including the following language in this Notice of Privacy Practices: "We may use your health information to determine whether you are eligible for certain benefits or disclose that information to the appropriate officials within the Department of Veterans Affairs to determine your eligibility for these benefits."
- **Department of State.** A health care provider that is a component of the Department of State should include the following: "We may use your health information to make certain medical suitability determinations authorized by law, or disclose that information to other appropriate officials within the Department of State to make these determinations."

^{xxii} Ropes & Gray has learned through its contacts at the New York State Department of Health (NYSDOH) that the New York laws granting individuals a general right to privacy and confidentiality with respect to their health information are interpreted by NYSDOH as placing an obligation on health care providers such as our agency to obtain a consumer's written consent before using or disclosing protected health information for treatment, payment and health care operations. Regulators at NYSDOH have indicated that where uses and disclosures other than for treatment, payment and health care operations are involved, NYSDOH will defer to the HIPAA requirements unless a state law specifically requires that the consumer's permission (whether verbal or written) be obtained under the circumstances. Thus, where a disclosure under HIPAA would be permitted without a consumer's written authorization and without providing the consumer with an opportunity to object (such as a disclosure to report a crime on the premises), regulators at NYSDOH have stated that no other permission (either verbal or written) need be obtained unless specifically required by a New York law addressing the situation. We note that HIPAA will not require written authorization for, or an opportunity to object to, the uses and disclosures described in Section 3 of this Notice of Privacy Practices, and the preemption analysis prepared by Ropes & Gray has not identified any specific state laws requiring either written or verbal permission for such disclosures. Nevertheless, as a precaution, the Notice of Privacy Practices includes a statement that written or verbal permission will be obtained from the consumer when specifically required under state law.

^{xxiii} See 45 C.F.R. § 164.506(a).

^{xxiv} See endnote 3. Programs should follow current law and practice regarding whether emergency treatment may be provided without obtaining a consumer's written consent to use and disclose protected health information for treatment, payment and health care operations.

^{xxv} See 45 C.F.R. § 164.506(a).

^{xxvi} See endnote 3. Programs should follow current law and practice regarding whether treatment may be provided in these circumstances without obtaining a consumer’s written consent to use and disclose protected health information for treatment, payment and health care operations.

^{xxvii} See 45 C.F.R. § 164.512(a).

^{xxviii} See 45 C.F.R. § 164.512(b).

^{xxix} See 45 C.F.R. § 164.512(c).

^{xxx} See 45 C.F.R. § 164.512(d).

^{xxxi} See 45 C.F.R. § 164.512(b)(1)(iii).

^{xxxii} See 45 C.F.R. § 164.512(e).

^{xxxiii} See 45 C.F.R. § 164.512(f).

^{xxxiv} The Privacy Rule permits a covered entity to report a crime discovered during an offsite medical emergency (for example, by emergency medical technicians at the scene of a crime). 45 C.F.R. 164.512(f)(6). This provision would not apply to most programs, which do not have off-site emergency medical technicians who are likely to be the first responders at the scene of a crime.

^{xxxv} See 45 C.F.R. § 164.512(j).

^{xxxvi} See 45 C.F.R. §§ 164.512(k)(2)-(3).

^{xxxvii} See 45 C.F.R. § 164.512(k)(5).

^{xxxviii} This provision would apply only in circumstances where a former consumer of agency services is detained in a correctional facility, or by a law enforcement officer, and the former consumer’s information is needed to ensure his or her health or safety, or the health or safety of other persons at the facility or during transport.

^{xxxix} See 45 C.F.R. § 164.512(l).

^{xl} See 45 C.F.R. § 164.512(g).

^{xli} See 45 C.F.R. § 164.512(h).

^{xlii} See 45 C.F.R. § 164.512(i).

^{xliii} See 45 C.F.R. § 164.502(d) (regarding use and disclosure of de-identified information); 45 C.F.R. § 164.514(e) (regarding use of a “limited data set” pursuant to a “data use agreement”).

^{xliv} See 45 C.F.R. § 164.502(a)(1)(iii).

^{xl} See 45 C.F.R. § 164.524.

^{xlvi} Under the Privacy Rule, a program could require that the consumer’s request for access be made in writing. See 45 C.F.R. § 164.524(b)(1).

^{xlvi} Under New York law, health care providers may charge a maximum of \$0.75 per page when providing consumers with copies of their health information. N.Y. Pub. Health Law § 18(2)(e). Moreover, a consumer may not be denied access to copies of his or her health information solely because of an inability to pay. *Id.*

^{xlvi} Under the Privacy Rule, inspection must be granted within 30 days for records on-site at the program and 60 days for off-site records, and copies must be provided within 60 days. 45 C.F.R. § 164.524(b)(2).

^{xlvi} Under New York Public Health Law § 18(3)(d), consumers must provide a summary of the requested information if direct access to the information is denied.

ⁱ See 45 C.F.R. § 164.526.

^{li} See 45 C.F.R. § 164.528.

^{lii} For more information about why an accounting list does not need to include information that is shared within and between the program and the facilities listed at the beginning of this notice (which are members of an organized health care arrangement), please see the policy we have prepared entitled *Accounting of Disclosures* and the annotations in the endnotes of that policy. We note that if a program modifies the *Accounting of Disclosures* policy, the Notice of Privacy Practices should be updated as appropriate to reflect the practices as stated in that accounting policy.

^{liii} See 45 C.F.R. § 164.522(a).

^{liv} See 45 C.F.R. § 164.522(b).

^{lv} Although not *required* under the Privacy Rule, we recommend that covered entities take advantage of the *option* under that Rule to ask consumers or their personal representatives to specify an alternative means of contact and an explanation for how payment will be handled if the request for confidential communication is granted. See 45 C.F.R. § 164.522(b)(2).

^{lvi} The program must make a good faith effort to obtain written acknowledgment of the consumer's receipt of this Notice of Privacy Practices on the first date the program provides treatment or care to the consumer, except in an emergency treatment circumstance. See 45 C.F.R. § 164.520(c)(2)(ii). If such acknowledgment cannot be obtained, the program must document its good faith efforts to obtain the acknowledgment and why it was not obtained. See *id.* The Privacy Rule does not specify the form that the written acknowledgment must take, nor does it mandate any specific process that must be followed in attempting to obtain the acknowledgment. However, to satisfy a program's administrative obligations under the Privacy Rule, a program will need to develop and implement a written policy and procedure regarding how it will make good faith efforts to obtain this written acknowledgment.

^{lvii} See endnote 4. A program has the flexibility to include this language here in order to obtain the consumer's general written consent in accordance with New York law. Alternatively, a program may delete this sentence and add it to a separate form or add it to another already existing form the program is using to obtain other consents or permissions from the consumer. This consent may not be combined with a written authorization required under HIPAA, however. See 45 C.F.R. § 164.508(b)(3).