

TO: Local District Commissioners**FROM:** Kathryn Kuhmerker, Deputy Commissioner, Office of Medicaid
Management**SUBJECT:** Medicaid Data Confidentiality**EFFECTIVE DATE:** Immediately**CONTACT PERSON:** Department of Health: Bureau of Local District Support
Upstate - (518)474-9130; New York City - (212)268-6855

This message is to remind local social services districts of the State and Federal laws and regulations regarding the disclosure of Medicaid Data. The Social Security Act (1902(a)(7)) restricts the use or disclosure of information concerning recipients to purposes directly connected to the administration of the Medicaid program. State Social Services law Section 369 parallels the Federal requirements. In addition, NYCRR Title 18, Section 357.3 speaks to the confidential nature of records. Administration of the program includes four activities.

1. Establishing eligibility
2. Determining the amount of Medical Assistance
3. Providing services for recipients
4. Fraud and Abuse Activities

HIV information may/will have 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 Public Health Law, Article 27-F. Any unauthorized further disclosure is in violation of State law. NYCRR Title 18 Section 403.9(c) states that officers or employees of the department or social services district who disclose HIV related information except as specified in Section 357.3 of this title and Article 27-F of the Public Health Law will be subject to civil penalties and fines determined by a court of competent jurisdiction in accordance with Section 2783 of the Public Health Law.

Information concerning patients in federally assisted alcohol or drug abuse programs is also considered highly confidential, and protected under federal regulations, 42 C.F. R. Part 2. The regulations prohibit any communication of information about an identified patient or which would identify someone as a patient or as a drug or alcohol abuser except as expressly noted in the regulations. The exceptions can be generally grouped as permitting disclosures: a) with written patient consent; b) when no identifying information is given; c) for medical emergencies; d) in cases where a court order, issued only for the sole purpose to authorize a disclosure or use of information which would otherwise be prohibited. A subpoena or a similar legal mandate must also be issued to compel disclosure; e) to investigate

crimes at the facility/against personnel; f) for child abuse reporting; g) for research, evaluation and audit; h) for internal program/provider communications; and i) when a qualified service agreement has been signed with another provider.

As stated in NYCRR Title 18 Section 313.3, information about persons who are about to be, or have been, discharged or released from State mental hygiene facilities and who have applied for or are receiving public assistance and care may be obtained from those facilities by social services officials as follows:

(1) Information concerning a patient's identity and period or periods of hospitalization shall be obtained if necessary to determine fiscal responsibility for his/her public assistance and care. In such cases, the patient's consent is not required.

(2) Other information about the patient, including information from his/her clinical record, which is required by the local department, may be obtained only with written consent of the patient.

(3) All information obtained by a local social services department concerning a patient in a State mental hygiene facility shall be deemed confidential, and may be used by officials and employees of the local departments of social services only for the purposes of determining fiscal responsibility for the cost of the patient's public assistance and care for providing services to the patient. Each social services official shall maintain, and shall direct his/her staff to maintain, the confidentiality of any information received by the local social services department.

(4) Information obtained under this section may be divulged to members of the staff of a mental hygiene facility, or the State Department of Mental Hygiene, who work with the patient in their professional capacities.

The State is currently drafting an Administrative Directive, which will provide information regarding additional confidentiality issues.