

NEW YORK STATE **PRIVACY & CONFIDENTIALITY TOOLKIT**

MARCH, 15 2014

Submitted to the NYS Office of Children and Families
By Documentation Strategies and Stewards of Change

Table of Contents

2	Acknowledgements
3	Introduction
6	Getting Started
10	Model and Path for Child Health Passport
14	Establishing Governance
17	Education
23	Table
25	Health
35	Table
49	Mental Health and Drug & Alcohol
57	Table
64	Child Support
67	Table
78	Juvenile Justice
80	Table
83	Other Programs
83	TANF
86	SNAP
89	SSI
90	Child Care and Development Block Grant (Child Day Care)
91	Violence Against Women
92	Tables
109	Child Welfare
122	Table

Acknowledgments

The need for a comprehensive toolkit on confidentiality and privacy in information sharing across health and human services was recognized by the New York State Office of Children and Family Services (OCFS). It was created through a contract with Documentation Strategies and subcontractor support from Stewards of Change.

The Project Team would like to acknowledge the leadership at OCFS for their initiation and leadership with this project.

Sheila Poole – OCFS Interim Commissioner

Gladys Carrion – former OCFS Commissioner

William Travis Jr – Human Services Chief Information Officer

Eugene Ashley – OCFS Interoperability Enterprise Architect

The New York State Privacy and Confidentiality Toolkit is based on extensive reviews of both Federal and New York State laws, an understanding of the approaches to data sharing in New York and in other jurisdictions across the United States, and research of existing literature in this growing field.

The NYS Privacy and Confidentiality Toolkit Project Team

Project and Contract Executive

Preetham Morkanda
Documentation Strategies, Inc

Project Manager

Gerry Pape
Stewards of Change

Lead Authors

Richard Gold, Esq.
Stewards of Change

Charlie Hollander, Esq.
Stewards of Change

Rachel Pratt
Stewards of Change



Introduction

This Toolkit was commissioned by the New York State Office of Children and Family Services (OCFS), to guide the privacy and confidentiality aspects of information sharing in the State's health and human services programs. The Toolkit analyzes, explains, and is intended to aid New York in the navigation of a number of Federal and New York State laws that impact the sharing of case-level information among health and human services agencies and providers. In particular, the Toolkit uses as an example New York's Child Health Passport and provides very specific approaches to make that data sharing project a success.

As OCFS knows well, a person or family today who is receiving governmental services is usually involved with multiple systems. A young mother and her child, for example, may receive income assistance, food stamps, child care and child welfare services, mental health and drug or alcohol treatment services, and myriad other federally-supported programs. These services are designed to act alone, in their own silos, each requiring data, boasting different rules and requirements, creating their own service plan for the client to follow, and assigning staff unknown to each other to oversee the same case. As should be expected, this approach works against effectiveness and efficiency. Each service can be isolated from the others and information is frequently not shared or accessed between programs.

Confidentiality and privacy, long the cornerstones of our society, face threats as well as opportunities with the rapid development of computer technology. Sharing and accessing information is far easier, as is our ability to protect confidentiality and privacy. At the same time, a growing fear has arisen about the tremendous potential for unauthorized sharing of personal information. The web of federal and state statutes and regulations has created a perception of a data sharing impasse that poorly serves both our families and those who provide the needed care. These barriers create redundancies and restrict the ability of service providers to improve outcomes and the efficiency with which services are delivered.

The positive impact of coordinated care and integrated case management on improving the overall health and well-being of individuals is well documented. Better outcomes mean healthier, safer, stabilized individuals and families with a better chance of sustaining self-sufficiency and long-term personal success, which, in turn, reduces costs to the states and local governments.

Our country, right now, faces a critical need for a reasoned, delicate balancing of interests to promote information sharing, protect confidentiality and privacy, improve services and outcomes, increase efficiency, and reduce duplication of efforts for both clients and the workforce. In these times of doing more with less, and with the problems of workforce development and stability, jurisdictions New York must take advantage of the tremendous technological advances to improve outcomes and efficiency for both clients and staff.

There are three distinct reasons for sharing information, all three of which are essential for an effective and efficient service system:

- Individual case planning and decision-making to facilitate coordination of services.
- Policy, including program development and review.
- Program evaluation, performance measurement, and research.

The Toolkit addresses information sharing for the purpose of individual case planning and decision-making.¹ Such information must be case-level and identifiable. Aggregated and de-identified information is helpful for policy and program development, but may not be helpful in a particular case where the case manager is developing a specific individual's service plan.

This guide is intended to help New York's administrators and other professionals who are working with individual clients, as well as their chain of command—not just lawyers—navigate intersecting laws. Agency directors and others can use this Toolkit to initiate a data sharing dialogue with directors from other systems and agencies. A common lament across the country now is that information cannot be shared because “Federal law prohibits it.” The Toolkit is a road map to get to the answer of “yes.” With the Toolkit in hand, New York will more easily navigate information sharing and, at the same time, protect peoples' rights to confidentiality and privacy.

With this Toolkit as a guide, New York can, first, move more quickly forward with its Child Health Passport project. And beyond that, the State can create transparent policies and processes for a consumer-centered, coordinated service delivery system. It will facilitate better information collection, sharing, and use of the minimum necessary data and, at the same time, protect the individuals' rights to confidentiality and privacy. The toolkit will help New York State to clarify, in its own policies and procedures, access to information and client notification regarding the storage, use, reuse, sharing, and client correction or update of information.

This Toolkit does not replace the important process of consulting with your own legal counsel. It is important to note, too, that this Toolkit does not provide a full roadmap to information sharing, concentrating primarily on confidentiality and privacy. But hopefully, as New York finds itself struggling to get beyond the barriers of confidentiality in the Federal laws and its own State laws that prevent or hinder information sharing, this Toolkit will enable the State to proceed in an organized, efficient, and effective manner.

Organization of the Toolkit

The Toolkit as a whole contains:

- Recommendations for getting started, including the establishment of governance.
- Models and a path forward for implementation of the Child Health Passport.
- Individual chapters addressing confidentiality and privacy through the lens of particular areas of service provision.

¹ A number of helpful subject matter toolkits regarding aggregate data and information sharing are available on the web, including but not limited to toolkits dealing with education and juvenile justice.

- Reviews of Federal and New York State health and human service laws and regulations. For each law, the Toolkit provides a basic, understandable description of the confidentiality issues. It highlights the law's specific language permitting information sharing and outlines the information, data elements, and practical and usable definitions of the data elements where necessary.
- Tables outlining each law, comparing related Federal and New York State laws, explaining information sharing permitted, how to share information, and resolving prevailing myths.
- Illustrations depicting the information sharing required, for Child Health Passport, between the agency or agencies that are the subject of those chapters and the NYS Office of Children and Family Services (OCFS).
- Examples of information-sharing initiatives and processes from across the country
- Sample MOUs and other documents that may simplify the process for New York State to reach desired successful outcomes.
- Draft MOUs tailored specifically to New York, with the Child Health Passport in mind.

Individual Chapters

In specific chapters, several questions are posed and answered:

- What information can be shared?
- Why is it necessary to share the information?
- What is the best method for information sharing?
- Who can receive the information?
- How will those receiving the information maintain its confidentiality and protect it from further disclosure?

In addition chapters contain:

- Examples of successful information sharing initiatives from across the country.
- Charts of relevant Federal and New York State laws and regulations.

Appendix

The Appendix includes sample memoranda of understanding, and court orders and administrative structures from various jurisdictions. The intent of their inclusion is for New York to use them as a jumping off place to build and maintain its own information sharing initiatives.

Draft MOUs have also been created for New York, as a starting place for the Child Health Passport project, and can be found in the Appendix.

Getting Started

Implementing Child Health Passport and Other Interoperability Initiatives

The next three chapters are designed as a roadmap for New York State to begin information sharing across health and human services.

- **Getting Started** is intended to provide New York State’s leaders with an overview of the steps required develop information sharing strategies to improve outcomes for clients, increase efficiency of operations, and protect the confidentiality rights of individuals while doing this.
- **Model and Path for Child Health Passport** guides New York through the steps to implementation, assisting with real and perceived barriers to the sharing of information, specifically as it pertains to the Child Health Passport initiative, the pilot project for implementing this Toolkit.
- **Establishing Governance** makes recommendations for the structure, composition, and scope of the governing body.

The intent of these three chapters is to give OCFS and New York State a clear overview to follow in navigating privacy and confidentiality as it impacts data sharing in Child Health Passport and beyond. Later chapters provide necessary detail and real tools such as sample memoranda of understanding and draft legislation from other jurisdictions.

Interoperability² will require a significant investment of time and effort. It will also require an unwavering leadership commitment. Necessary participants for this effort are:

- Top leaders of the different systems establishing and serving on governing bodies, convening sub-committees, setting the tone and direction, developing a privacy policy and then using the dictates of that policy to reach written agreement across involved agencies regarding the information sharing process.
- Lawyers to determine how to navigate the confidentiality and privacy issues.
- Program policy, operational and practice experts, from different roles and positions, determining the specific information to be shared to achieve better outcomes for the clients.
- Technology personnel determining the most cost-effective manner of sharing the information.
- Security officers verifying the recipients of the information and ensuring ongoing data safety.

²Interoperable systems share information and processes to efficiently deliver integrated services to the client community. The term “Interoperability” is sometimes used or refers to the ability of two or more systems or components to exchange information and to use the information to make better decisions. The term is often used in a technical engineering sense and also in a broader sense, taking into account social, political, and organizational factors that impact performance.

Key tasks for the agency leaders are:

- Serving on the governing body, or Executive Steering Committee, for cross-jurisdictional information sharing.
- Championing information sharing in their own organizations.
- Taking the lead in the development of any and all Memoranda of Understanding and other cross-agency information sharing documents.
- Designating a team of staff, from the areas of services that are being planned, to sit on subcommittees to create the lists of: 1) minimally necessary information to be shared for the legitimate governmental purpose to succeed; and 2) recipients of such information.
- Designating a team, including the privacy officials and the information technology staff, to determine methods to share the information and protect it once shared. This group or subcommittee also will develop policies and procedures regarding the privacy security and safeguards of the shared information. The result of this process will be enforced by the privacy officials from the affected agencies.
- Arranging for training of all members of the workforce on the policies and procedures regarding the information sharing project once it is initiated and fully implemented.
- Arranging for the crafting of policies and procedures regarding appropriate safeguards for sharing.

Why Share Information

The first question to tackle is why the system should share information when it has not been shared in the past.

New York must come up with a clearly articulated response and a written shared vision statement providing the reasons for the information sharing initiative.

Samples of shared vision statements are included in the Toolkit Appendix. However, the process to create the statement of shared vision is more important than the actual document, so included samples should not be viewed as shortcuts to the real collaboration required. Since each system was developed and has functioned in isolation from other systems, there is a lack of knowledge about each other. Each system knows its own process of security and protecting information, but one system does not know the policies and procedures and laws and regulations of another system. Often there is a lack of trust between practitioners of different areas and systems that can only be overcome through sustained collaboration over time.

Building trust takes time.

It must be an inclusive process involving the different levels and roles within the agency to provide input on the importance of information sharing, the ways data sharing could improve job performance, and the specific information required. Used inclusively, this process will build valuable agreement and agency-wide ownership.

What Information to Share

New York must next decide what information is necessary to be shared in order to accomplish the mission.

This is an essential and challenging part of the process because the list must be very specific. If the information is not necessary, then it should not be shared. Too little information is not useful and too much information is equally useless. While often frustrating, this process is important and worth the effort. The State should also search to see whether other jurisdictions have shared similar information to understand how they accomplished the task and learn about successes to follow and pitfalls to avoid.

Who Can Access the Information

The State then must determine who can access the information.

This part of the process will identify the staff persons or classes of persons and the supervisory chain requiring access to the shared protected information, and any conditions appropriate to such access. For persons or classes of persons other than case managers and their supervisory chain, this group needs to conduct a careful review to determine whether the shared information is necessary to perform essential functions.

How to Share Information

Contained in all of the existing legislation are a number of ways to share personally identified information with another child serving system. Each chapter in this handbook will explain when and how to use a particular method depending on the situation, the involved agencies and related laws, and other factors. But in general, New York State will rely on the following methods, samples of which are included in the appendix:

- Written consent or authorization by parent/eligible student
- Memorandum of Understanding
- Court order or subpoena
- State statute

Written Consent: This method is quite simply a written authorization signed by the parent (includes the parent, guardian, or individual acting as the parent in the absence of a parent or guardian). If a court is involved it may appoint a representative or a surrogate parent (e.g., under special education requirements of the Individuals with Disabilities Education Act) and the right to sign such an authorization is transferred from the parent to such a person. It is important to recognize that, even when shared, the agency or person receiving the information is in most instances not permitted to release or share with any other party without again obtaining the written consent of the parent or eligible child.

Memorandum of Understanding: A Memorandum of Understanding (MOU) is a written agreement, signed by all involved agencies, that insures that the details of information sharing are worked out to the satisfaction of all involved systems. It clarifies when and what information is provided, how it is provided (hard copy or electronically), whether shared or merely accessed), who shares and who receives information, and how the information is maintained in a confidential manner and not further shared.

Court Orders/Subpoenas: Information sharing through a court order or subpoena is simplified when it occurs between agencies with regular court involvement or oversight in cases, such as child welfare. The agency requiring information can request, when there is court involvement, that the court issue a specific court order or subpoena regarding the release of specific protected information. The court could also consider including this release information in original disposition orders and allowing the judge to have access to such information as well as the parties to the court proceeding. It is important to be aware that such information be part of specific court orders and not a general “Order of the Court” that applies to all clients. The individual court order must apply to a specific individual; a generalized court order is not sufficient for the agency holding the requested information to act upon and release or share it.

Even with a court order or subpoena, agencies must make efforts to notify clients or their parents before releasing the information and the court order should include language that parties receiving information must avoid revealing to any other persons and should destroy information when it is no longer required by the receiving party.

State Statute: A state can pass legislation that clearly provides for the sharing of information under particular circumstances to further the public good and the good of the individual whose information is being shared. Such state statutes cannot conflict with Federal law but where the Federal law is vague or silent, it can provide for the sharing. A clear example of a state statute permitting information to be shared is with the creation of Health Information Exchanges (HIE) pursuant to the Affordable Care Act. Personal health information is shared with the HIE and then the HIE shares such information with other entities.

Model and Path for Child Health Passport

Early in the planning meetings for this Toolkit, the New York State Office of Children and Family Services (OCFS) placed its highest priority among interoperability projects on the Child Health Passport and asked that this Toolkit use the Passport as a starting place for examining privacy and confidentiality. In response, this chapter explains the model and path proposed for the implementation of Child Health Passport.

Building the Child Health Passport

The Child Health Passport, when complete, will offer every child in foster care a health, education, and human service record that is portable and accessible by all appropriate health and human service staff involved with that child. Outcomes include a more seamless approach to child health and well-being, eliminating duplication of medication and vaccinations, improved educational outcomes, providing all case managers with the information needed to better treat and serve the child and family, reducing costs and improving efficiency, and improving overall health and well-being.

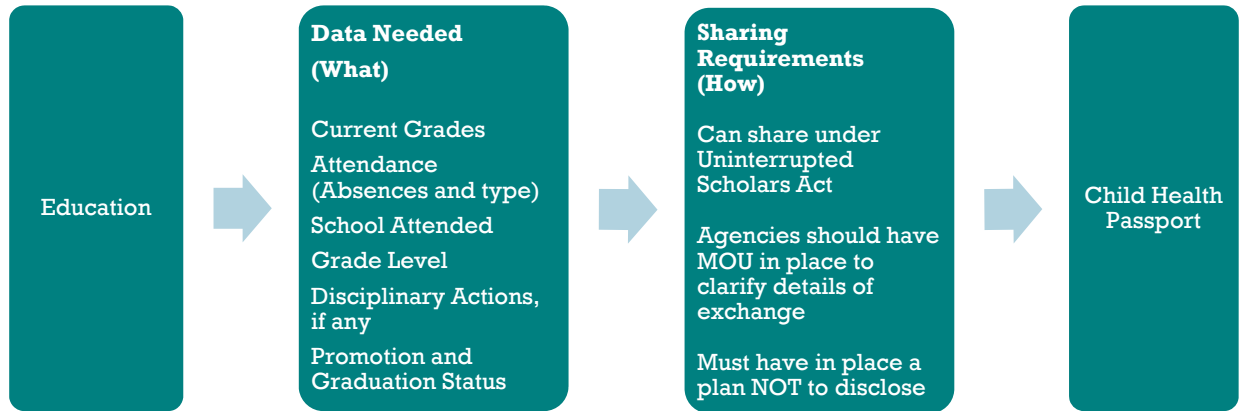
As is made clear in the models on the next pages, most of the information projected to be required by the Child Health Passport can be shared with OCFS. That, however, does not mean that all information can be shared with everyone. Nor can OCFS create an MOU in isolation and expect that alone to eliminate the barriers of information sharing. But it does open the door for the important and very specific conversations, described in *Getting Started*, which must occur between participating agencies about who will have access to shared data, which data will be shared, and the method for sharing. In most instances, the development of MOUs—as a collaborative process with the right players in the room—will lay the groundwork for sharing.

Using the Models

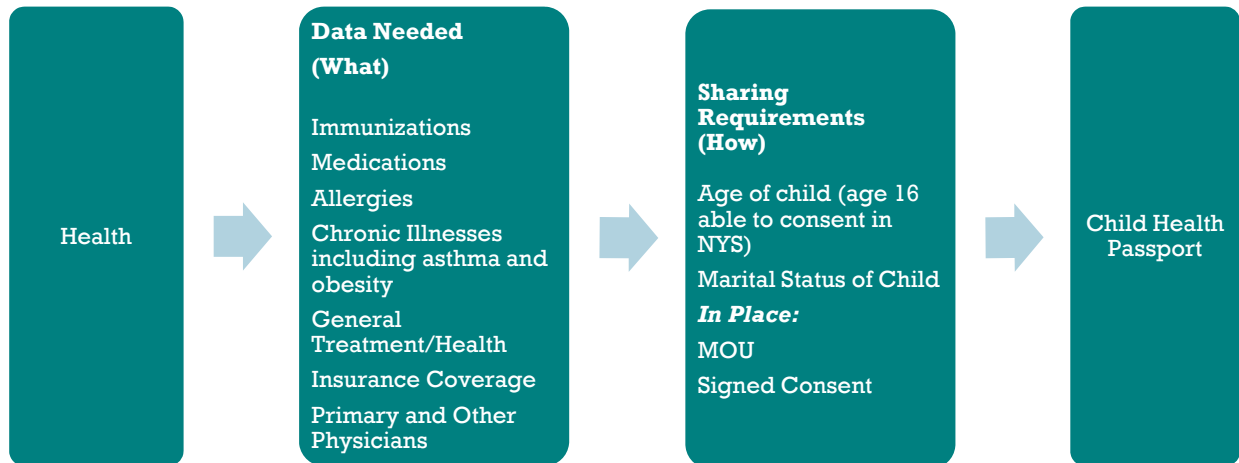
The information required for the Passport will be shared, by the other related child and family serving agencies, with OCFS. Therefore, most models on the following pages—with the exception of TANF, SNAP, and SSI which might require a reciprocal sharing of information—depict a one-directional flow of information (e.g., from schools or behavioral health providers to OCFS).

The grayed boxes in the models show the agencies involved and the arrow between them depicts the directional flow of information. The boxes at the top give examples of the specific data, or the “what,” that might be included in the Child Health Passport. This list is not intended to be exhaustive, but rather to give examples of both the type of information and the level of specificity that will be a key element in understanding how confidentiality applies in each example. Finally, the box at the bottom of each model provides a brief summary of the sharing requirements, or the “how.” This is only a summary and it is important that New York State read the related chapter in this manual for a full understanding of the confidentiality requirements under each of the related laws.

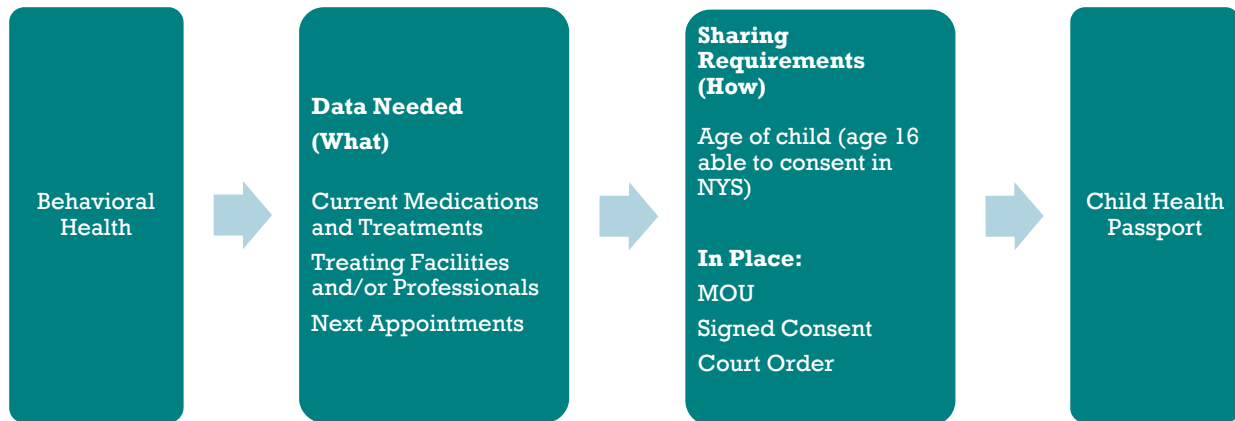
Education Information



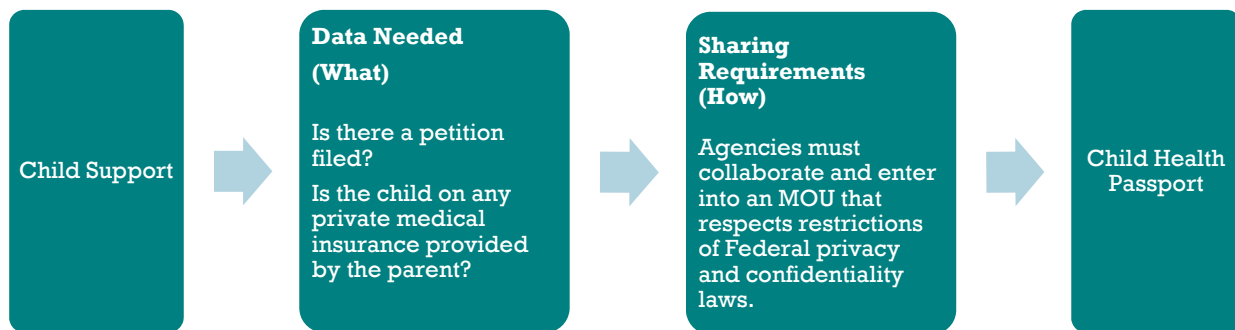
Health Information



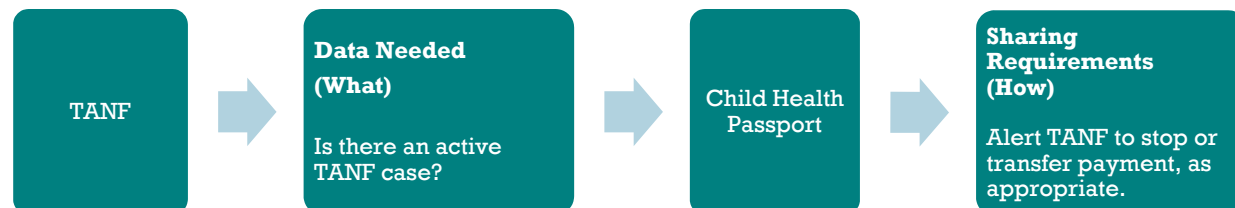
Behavioral Health Information



Child Support Information



TANF Information



SNAP Information



SSI Information



Establishing Governance

The process moving forward should start with the establishment of governance. For New York State to successfully implement interoperability initiatives, it is recommended that the State form a cross-agency governance structure to take the lead in making decisions, establish priorities, overcome hurdles, and manage both internal and external communications. The need for governance early in a project is particularly important in public sector interoperability projects, like in New York, that span multiple agencies and require buy-in from leaders who are accustomed to making decisions autonomously or without the consent of other agency leaders.

NOTE: The recommendation for forming a comprehensive governance structure does not mean that progress cannot occur prior to its creation. This handbook refers throughout to the Policy and Legal Subcommittees. If governance is not yet formed, consider these subcommittees instead as loosely formed groups of the “right people” around the table making decisions and seeking the appropriate levels of approval and buy-in. Be sure to include both attorneys and program leadership to create the right solutions as well as the buy-in the State requires.

Recently the State of Illinois conducted extensive research into successful governance in other jurisdictions across the United States as it set out to establish its own governance structure for its own health and human services interoperability project, The Illinois Framework. From its research, Illinois proposed that by taking careful steps and including some key attributes found in other successful governance models, states and jurisdictions can implement governance models that fit their cross-agency needs. They created a list of six attributes that they observed in successful governance models and suggest that other jurisdictions beginning their own governance take heed of those attributes. The authors of the Illinois handbook believe that applying the six elements thoughtfully and uniformly will “jump start” effective governance models in other jurisdictions.³ The six attributes of successful governance are:

- Identify and assemble strong executive leadership
- Create a shared vision
- Formalize governance structure
- Establish clear decision-making process
- Maintain transparent communications

³*Establishing Governance for Health and Human Service Interoperability Initiatives: A Handbook for States. A report of the State of Illinois Interoperability and Integration Project, An Initiative of the Illinois Framework for Healthcare and Human Services, December 2013.* (www.illinoisframework.gov)

- Evaluate governance system and adapt as necessary

Since Stewards of Change is charged with assisting New York through its privacy and confidentiality hurdles of information sharing rather than the larger focus of data sharing, the governance proposed needs to reflect this narrower focus. However, the governance plan presented in this Toolkit assumes that subcommittees created to focus on privacy and confidentiality would be part of and report into a larger governing body or Executive Steering Committee (ESC) focused on all aspects of data sharing.

To that end, it is recommended that New York form or engage an existing ESC made up of leaders of the involved agencies. Next, subcommittees—at a minimum legal and policy subcommittees—should be formed to undertake the tasks described in this Toolkit and prepare the ESC to make its larger decisions.

The primary task of the subcommittees will be to grapple with the what, who, and how of information sharing.

Once subcommittees and their reporting structure are established, New York State can convene the groups and begin the real task of finding New York's answers to the three questions taking on the challenge of the confidentiality and privacy issue inherent in information sharing. Note, the work of the subcommittees can only be undertaken in the context of a real life information sharing opportunity between two or more agencies. This process is very specific and detailed and cannot be generalized.

The public and the advocates should also be kept informed and involved during every step of the process, to address any concerns that the ease of data sharing, through electronic information technology, will erode all rights of confidentiality and privacy. It is leadership's role to be clear with the client population, the advocates, the legislature, the providers and practitioners, the other system partners, and the public that this project will include an investigation and thorough review of the privacy and confidentiality issues and that these rights will be acknowledged and protected. It is also important to make clear that the information technology will aid in this process by securely maintaining and protecting any data involved.

Throughout, it will be important to share information on progress with all of concerned constituents to ensure the project's transparency and avoid or significantly decrease fears about the sharing of individual's personal information.

Role of the Legal Subcommittee

The role of agency lawyers in information-sharing initiatives is to provide advice, legal opinion, and critical information on accomplishing goals. The leadership of all involved agencies must make clear to their legal staff that they want to share the information, that it is an important initiative, and that the agencies need the lawyers to help make it happen.

Therefore, for any barrier identified, the legal group must also present suggestions to overcome the barrier.

The process should include reviewing Federal, New York State, and local laws as relevant to determine any barriers or requirements for information sharing. The explanation and discussion must be understandable to the layperson and not only to other lawyers.

The Legal Subcommittee must draft appropriate notices of information sharing, MOUs, authorizations, and transparent policies and procedures for clients to understand that information will be shared, how it will be shared, and how it will be protected. Such notices and authorizations must be understandable and inclusive of any required language.

Role of the Policy Subcommittee

New York State's Policy Subcommittee has before it a challenging task. This group must provide the State with careful guidance on why information is being shared, the specific information needed, and the staff members who require access to the information. The subcommittee has to be willing to question each other to insure that the final list of data elements to be shared is necessary and the plan for sharing information fully accomplishes the mission set forth by the Agency Heads.

Education

| Information from Schools to Other Systems

In New York, every child from the age of six to sixteen must attend school, although districts have the option to increase the age of compulsory attendance to seventeen. Also, a child who has completed a four-year high school course of study is not required to attend school. Many of these New York children and their families receive other governmental services as well. To best serve children and families, child-serving and other systems need information from the education system. Some information sharing needs are obvious. If a child is in the foster care system, it is important for the locally-operated foster care system to be aware of school attendance, problems, and progress for the particular child. If a child is living with his family in a homeless shelter, educational information would allow the child to continue in his home school. Or if a youth is on probation through the juvenile justice system, as a condition of probation the youth cannot have any unexcused absences and the juvenile justice system can monitor this condition only with shared information.

But there are other less obvious systems that would find school information to be useful and effective to providing services.

- A court can set as a condition of probation or parole for a parent, whether custodial or non-custodial, to ensure that the child attend school.
- The TANF office can condition a parent's federal cash assistance on ensuring that her child or children attend school.
- The mental health system is providing in-school services to a child and needs to know if the treatment is improving the child's ability to concentrate in the classroom, to follow directions, and to grasp the age-appropriate information.

From an efficiency viewpoint, parents are required to provide the same or similar information to schools as they provide to numerous other systems: medical providers, public benefit offices, human services provider agencies. If these systems had access to basic personal identifying information about the family, it would save time for citizens and the system staff trying to assist the citizens.

What Information to Share

The table included in this chapter indicates that the Federal general education law, commonly known as the Family Education Rights and Privacy Act or FERPA, protects the privacy of student education records and provides parents and students the right to inspect and review the educational records kept by the school, to demand educational records be disclosed or released to others through a written release, to amend and correct education records which they believe to be incorrect or misleading, and to file complaints against the school for disclosing educational records in violation of this federal law.

It is also important to understand the definition of educational records: 1) directly relate to a student; 2) are maintained by an educational agency or institution; 3) contain personally identifiable information; and 4) may be in any format including written documents, computer information, microfilm or microfiche, video, film, and photograph. While much educational information is protected under FERPA, certain information kept by educational institutions is not confidential and can be shared. Under a strict interpretation of FERPA, the school may release some information without the written consent of the parent or student. This non-confidential information, referred to as directory information, includes:

- Name
- Address
- Telephone number
- Electronic mail address (including email)
- Date and place of birth
- Enrollment date in school
- Degrees, honors, and awards received
- Enrollment status
- Major field of study
- Grade level
- Honors and awards
- Participation in activities and sports
- Photograph
- Name of most recent school attended

In addition to directory information, schools may generate and retain non-personally identifiable information and administrative records that are not protected under FERPA. Schools must notify parents and eligible students (when student reaches the age of 18 or attends a school beyond the high school level) when directory information will be provided to others, to give the parents and student an opportunity to request that the school not disclose directory information.

The local public homeless agency is assisting a mother and three middle-school age children who are homeless and living in a family shelter as a result of a fire in their apartment building. All three children want to continue attending their home school. The homeless agency education coordinator contacts the McKinney-Vento school district representative and arranges transportation between shelter and school, additional funds for replacement of school uniforms lost in the fire, and an understanding that even when the family temporarily move in with their aunt, they will continue to attend their school for the remainder of the school year.

In this situation, the sharing of directory information will be sufficient to accomplish service goals and for both systems to work together and to improve the outcomes of their respective services to the child and the family.

The information that OCFS will include in the Child Health Passport is NOT considered directory information because one piece of information that the child welfare system requires is daily attendance to ensure that the foster child is attending school and is not truant. Attendance information is protected under FERPA.

For OCFS to succeed in the Child Health Passport Project, it requires non-directory, personally identifiable education information, which likely includes:

- Social Security Numbers
- Student identification number
- Race, ethnicity, and/or nationality
- Gender
- Daily attendance and truancy information
- Transcripts/grade reports
- Disciplinary actions, including detentions, suspensions, expulsions

How to Share Information

A child in foster care is failing two of four subjects in 10th grade and the county agency case worker wants to see the youth's grade reports for each assignment and test to provide additional community supports for the

struggling student before the grading periods have concluded and the child has failed. Currently, the child's mother has web access to this information. Prior to an upcoming permanency review hearing, the agency asks the youth's mother to sign an authorization giving school information access to the child's caseworker. The mother refuses. The judge issues an order for the school to provide a password to the child welfare agency for access to the educational information that is posted on the school's protected website.

The county child welfare system meets with the superintendents of all schools within the county to discuss implementation of the recent federal Uninterrupted Scholars Act of 2013, amending FERPA and permitting nonconsensual release of education information for children in foster care to the county child welfare agency caseworker. The child welfare administrator and the superintendents agree to enter into a Memorandum of Understanding outlining the specific information to be shared, when the information will be shared, how the information will be shared, designated persons from the different districts and the county child welfare agency to serve as contacts and to work out any problems, and how the child welfare agency will protect the education information so that it is secure and only shared on a need to know basis.

From a legal perspective, with the passage of the Uninterrupted Scholars Act amendment to FERPA, there is now an explicit exception to confidentiality regarding the release of education information to agency caseworker or other representatives of state or local child welfare agency responsible for the care and protection of students, with the provision that information cannot be subsequently disclosed unless to an entity or person engaged in addressing the student's educational needs.

No longer is there a reason not to share education information with the child welfare system.

Protected educational information is important to systems other than child welfare as well. In those situations, where the Uninterrupted Scholar's Act wouldn't apply, there are a number of ways to share personally-identified education information with another child serving system including written consent, court order or subpoena, state statute, or Memorandum of Understanding. At the present time, New York State does not want to approach from a statutory change perspective, and so this chapter looks at the other methods.

Written Consent: Parents can consent for the release of their child's educational information. If a court is involved and appoints an educational representative or a surrogate parent under special education requirements of the Individuals with Disabilities Education Act, the right to sign such an authorization is transferred from the parent to such a person. Even when shared, the agency or person receiving the educational information is not permitted to release or share with any other party without again obtaining the written consent of the parent or eligible child.

There are instances where a prior written consent or authorization is not necessary for an educational institution to release and share educational information and personally identifiable information. These include:

- To appropriate officials if health and safety of student is at issue.
- When there is a suspicion that a child seen by a mandated reporter in the person's court has been abused or neglected or threatened with abuse or neglect, as determined by state statute
- When, as a result of a crime of violence, a disciplinary hearing was conducted by the school, a final decision was recorded, and the alleged victim seeks the disclosure of the final decision.
- To State and local authorities within a juvenile justice system, pursuant to specific state law and prior to an adjudication of delinquency, to provide pre-adjudication services to student and to protect the health and safety of the student or other individuals and the officials certify in writing that the institution or individual receiving the educational information will not disclose to any third party other than the juvenile justice agency.
- Nonconsensual release of education information to agency caseworker or other representatives of state or local child welfare agency responsible for the care and protection of students, with the provision that information cannot be subsequently disclosed unless to entity or person engaged in addressing the student's educational needs.

Court Orders and Subpoenas: Information sharing through a court order or subpoena is simplified when it occurs between education and an agency or agencies with regular court involvement or oversight, such as juvenile justice. When the juvenile justice agency is involved with a family or if a child is truant from school, a juvenile court is likely to be involved and have jurisdiction of the case. In juvenile delinquency matters, the juvenile court is always involved and has jurisdiction over the matter. In these circumstances, the juvenile justice agency can request that the court issue a specific court order or subpoena regarding the release of specific protected educational information. The court could also consider including this release information in original disposition orders and allowing the judge to have access to such information as well as the parties to the court proceeding. Such information must be part of specific court orders and not a general "Order of the Court" that applies to all children. The individual court order must apply to a specific child; a generalized court order is not sufficient for the educational body to act upon and release or share the requested information.

Even with a court order or subpoena, schools must make efforts to notify parents or eligible youth before releasing information and the court order should include language that parties receiving the educational information must avoid revealing to any other persons and should destroy information when it is no longer required by the receiving party.

In a number of jurisdictions, state law provides that after a court has entered an order of dependency, the state becomes the guardian and has access to educational records under FERPA. In New York State, the legal parent (biological or adoptive) remains the child's guardian until parental rights are terminated. For permanency hearing reports (FCA §1089 (c)(2)(iii)), child's educational progress must be included.

Memorandum of Understanding: Prior to sharing information and regardless of other data sharing methods that might be employed, New York State should develop and implement an MOU between the Department of Education and the agency or agencies to receive the information. This is true even for sharing between education and child welfare. The process for creating an MOU is outlined in the Getting Started section and samples are included in the Toolkit Appendix.

Whether New York State, to access education information, pursues individual consents, court orders, subpoenas, state statutory permission, or relies on the Uninterrupted Scholars Act of 2013 which amends FERPA to permit nonconsensual sharing of education information for children placed in foster care, it is important for the school system and OCFS to negotiate and enter into a Memorandum of Understanding (MOU). The process of developing the MOU strengthens the partnership between agencies and makes clear the benefits to the child of the data being shared.

Several state and local entities have entered into MOUs and examples are included in the Appendix. In addition, for the Child Health Passport, a first draft of an MOU between the New York Office of Education and OCFS is included. The New York State draft recognizes this statutory exception of the Uninterrupted Scholar's Act and makes it the basis of the document. Each county children and family services agency should work in collaboration with the school districts within the county and any school district outside of the county where a child in foster care is placed.

Who Receives Shared Information

Using a need to know rule, the child's individual public agency caseworker and supervisor need to know the education information regarding a child in his caseload. If the child receives foster care services through a private provider under contract with the county, the child's caseworker and supervisor from the private provider agency also need to know the education information. Last, the court with jurisdiction of the foster care needs to know the child's education progress.

The method of caseworker or court access may assign a single access person or point-of-contact in the receiving agency. The single person in the county system would obtain information from the school district and then provide the information to the child's caseworker. Alternatively, the school could provide information to one of the caseworkers and that caseworker provides the information to the other caseworker. Or both of the caseworkers and supervisors may be permitted access to the school's information system for the limited purpose of reviewing attendance, grades, and behavioral incidents and actions regarding a particular student. Generally, the court would not be granted direct access to education information but rather such information would be provided in a report or through court testimony.

The "who" question of access to education information for the Child Health Passport is answered based on the role of the person and must be student specific.

EDUCATION

Federal Law⁴

General Education Provisions Act, commonly known as the Family Education Rights and Privacy Act (FERPA)

20 U.S.C. § 1232g

34 C.F.R. Part 99

1232g(b)(2); 99.30	Generally prohibits the disclosure of educational records, or personally identifiable information from a student's educational records without written consent of parent or guardian or student 18 years of age or older attending post-secondary program; includes any item of information directly related to child which is maintained by school.
1232g(a)(1)	Purpose is to ensure prompt access (no later than 45 days after request) to educational records for parents and students while protecting privacy of such records from disclosure to unauthorized individuals and entities.
1232g(a)(4)(B)(ii)	Does not include records maintained by law enforcement unit of educational agency or institution for sole purpose of law enforcement.
1232g(a)(4)(B)(iv)	Does not include records, of a student 18 years of age or older in a post-secondary education institution, made by physician, psychiatrist, psychologist, or other recognized professional or paraprofessional which are made in the provision of treatment to the student.
1232g(a)(5)(A)	"Directory Information" relating to a student includes the student's name, address, telephone number, date and place of birth, major field of study, participation in official recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and most previous educational institution attended.
1232g(a)(5)(B)	Prior to releasing directory information, must give notice to parents and a reasonable period of time to object to release of information regarding their child.
1232g(b)(1); 1232g(b)(2)	With proper parental consent or authorization, must release education information conditioned on such party agreeing not to permit any other party to have access to such information without a subsequent written consent of parents/student.
1242g(b)(1)(A)	Non-consensual release to other school officials who have legitimate educational interests.
1242g(b)(1)(B)	Non-consensual release to officials of other schools in which students seeks or intends to enroll with prior notice to parents and reasonable time for parents to object.
1242g(b)(1)(C)	Non-consensual release to authorized representatives of U.S. Comptroller General, U.S. Secretary, state educational authorities, or State Attorney General's Office for law enforcement purposes.
1242g(b)(1)(E)(ii)(i) & (ii)	Non-consensual release to state and local officials permitted by state statute regarding the juvenile justice system and such system's ability to effectively service, prior to adjudication, the student and certification of no subsequent disclosure without consent by parent.
1242g(b)(1)(I)	Non-consensual release in connection with an emergency to appropriate persons if such information is necessary to protect the health or safety of student or other persons.
1242g(b)(1)(J)(ii)	Non-consensual release purpose to subpoena issued for law enforcement purposes and court can order that educational facility cannot disclose to anyone the existence or contents of subpoena.
1242g(b)(1)(L)	Recent amendment pursuant to Uninterrupted Scholars Act of 2013, non-consensual release to agency caseworker or other representative of State or local child welfare agency responsible for

⁴ Note: The Uninterrupted Scholars act makes consent or other means unnecessary for data sharing between education and child welfare.

New York State law provides no further guidance beyond Federal laws. However, each local district may have its own rules concerning the confidentiality and permissible sharing of student records.

	the care and protection of student with provision that information cannot be subsequently disclosed unless to entity or person engaged in addressing the student's educational needs.
1242g(b)(2)(B)	Non-consensual release pursuant to a court order or lawfully issued subpoena with prior notice to parents and students except, if pursuant to a court proceeding dealing with child abuse and neglect, no notice to parent is required; in court proceedings other than those dealing with child abuse and neglect, parties receiving information must avoid revealing data to any other persons and to destroy data when no longer needed.
1242g(b)(6)(A) & (B)	Non-consensual release to an alleged victim of any crime of violence or a non-forcible sex offense the results of disciplinary proceeding conducted against the alleged perpetrator.
1242g(b)(7)(A)	Non-consensual release disclosing information provided to institution concerning registered sex offender who is required to register by law.
1242g(i)(1)(A) & (B)	Non-consensual disclosure to a parent or legal guardian regarding violation of any Federal, state, or local law, or rule of institution, governing use or possession of alcohol or controlled substance if student is under 21 years of age and has committed a disciplinary violation.
1242g(i)(2)	State law can prohibit educational institution from disclosing use or possession of alcohol or controlled substance.
1242g(j)	Non-consensual disclosure in the investigation of and prosecution of act of domestic and international terrorism.
1401(23); 300.30	If court appoints educational representative or surrogate parent (if involved in special education), parent's educational rights transfer to such a person.

Health

| Sharing Health Information with Other Systems

A family of three boys, ages five, four, and three, are found in a Bronx dwelling which has been declared unfit for human habitation, there is no evidence of a parent or guardian, and the children are hungry, exhausted, and scared. All three were medically cleared and the boys provided little if any information regarding their living status and their health services. The boys were not known to the child welfare system and in looking in HHS Connect, the social worker could not find them in the homeless system. After a diligent search, the social worker could not find any kinship possibilities but located an emergency foster home where the three boys could be placed together. The next day, the foster mother made them a full breakfast of eggs, pancakes, and toast and the boys consumed all of the food and asked for more, which the foster mother was happy to provide. Three hours later, the boys were rushed to the hospital where it was determined that they are allergic to egg products.

Every day—in newspapers, on television, and on talk radio—there are debates about ways to improve health care and reduce the high cost of its provision. From a Federal perspective, health care is a major policy initiative and, today, technology plays an important role in changes in the health care arena. Millions of Federal dollars have gone to states and individual health care providers through the Health Information Technology for Economic and Clinical Health (HITECH) Act and the American Recovery and Reinvestment Act (ARA) of 2009 to implement health information exchanges (HIE) and the meaningful use of health information technology to improve health outcomes, particularly through better coordination and continuity of care.⁵

For all of the technological advances to succeed, including but not limited to Electronic Medical Records (EMR), Electronic Health Records (HER), and the HIE, it is essential that health and human services systems collaborate. That means sharing appropriate information to avoid redundancies and thinking differently about how the human services and health systems can help each other better serve shared clients. The working hypothesis is that if the systems are in tandem, the health system can decrease reliance on high-cost emergency room care. It has been shown that families with problems paying rent and housing-related expenses experience higher rates of emergency hospitalizations than other families.⁶ Social needs are directly correlated to poorer health,

⁵Electronic Health Records and Meaningful Use, HHS Office of the National Coordinator for Health Information Technology, May 19, 2011

⁶ *Bushel, Gupta, Gee and Haas. "Housing Instability and Food Insecurity as Barriers to Health Care Among Low-Income Americans", Journal of General Internal Medicine, 2006*

making the social needs as important to address as the medical conditions for a healthy population. However, only the social service providers—not the medical field and practitioners—are able to address the patient’s social needs, which is why the systems must work together. If a person does not have food to eat, they are more likely to be in poor health. Conversely, a person’s health improves and the person’s health needs and costs decreases if they have nutritious food, adequate and affordable housing, transportation assistance, and gainful employment.⁷ A meaningful collaboration across these two sectors will result in more affordable health care costs and wellness for our citizens.

Since her husband's death three years ago, an 83 year old woman has been alone in the two-story house where she has lived for 59 years. She has one daughter who lives in Milwaukee, Wisconsin and another daughter who lives in Tulsa, Oklahoma. The woman has asthma, high blood pressure, and diabetes. Despite these conditions, she still smokes cigarettes and does not leave her house on a regular basis because she lives in a high crime area and is afraid for her safety. A nurse comes to her house every week; despite that the woman does not follow faithfully the prescribed medical regimen. She has been taken by ambulance to the emergency room 16 times in a ten month period and was admitted a total of 13 times in order to stabilize her again with her medications.

A 22 year old man has been held at Riker's a total of eight times in the last two years. He has epilepsy and is both a drug user and a mental health services consumer. Each time he was incarcerated the man was homeless and did not have medical insurance coverage. Upon entry, the jail system completed a series of tests and screenings of his health and behavioral health needs. The jail does not have access to his medical and human services information and services when he is not in jail and the correctional medical department does not have the ability to share information with the community provider system regarding services that he receives while incarcerated, resulting in many of the services and treatment being repeated unnecessarily.

In spite of the obvious benefits of sharing of health information, it has become a reflexive response to say that information cannot be shared because of the Health Insurance Portability and Accountability Act (HIPAA). Volumes have been written about HIPAA and this toolkit does not answer every question or provide every nuance regarding HIPAA, but in a nutshell, there are three purposes for this federal law:

⁷ “Health Care’s Blind Side: The Overlooked Connection between Social Needs and Good Health“, Robert Wood Johnson Foundation, December 2011

1. It was the beginning of the creation of a uniform standard for processing electronic health care claims in the United States. The HITECH amendment to ARRA built on this processing standard by providing financial incentives for the creation of electronic health records (EHRs). This was the “portability” purpose so that if a patient moved, the new medical provider would understand and use the same uniform standard.
2. It established a minimum set of privacy rules that all health care providers (as well as health plans and clearinghouses) must follow when handling patient information, giving patients greater control over how their individual health information is used. This was the first part of “accountability,” and its intent was to encourage people to truthfully share information with their medical providers without fear that the information will be broadly distributed to other persons.
3. It established new standards for protecting the security of patient information, or the second part of “accountability.”

According to the HHS Office of Civil Rights, the HIPAA Privacy Rule establishes a Federal foundation for the protection of personal health information, but it is carefully balanced to avoid creating unnecessary barriers to the delivery of quality health care. Therefore, the Rule generally prohibits the use or disclosure of protected health information unless authorized by the individual, except where this prohibition would result in unnecessary interference with access to quality health care or with certain other important public benefits of national priorities.

HIPAA was enacted to make it easier for individuals to share health information electronically and thus the word portability in its title. It is interesting to note that the law in many ways has stopped the sharing of information even between practitioners of health services and other professionals working with an individual in other fields and systems. Instead of seeing the protections as a part of the treatment process and the multi-disciplinary practice, HIPAA has become the “do not pass go” of information sharing, even though the law does not prohibit information from being shared. The following outlines perceived barriers that HIPAA presents to the efforts of sharing health information with other systems

- Federally-mandated foundation for the protection of personal health information, and the confidentiality and privacy of such information.
- Strong privacy protections regarding the sharing of protected health information unless authorized by the individual.
- No uniform authorization for an individual; instead, each covered entity has its own and separate authorization for an individual to sign.
- Fear of violation of the Federal law and disclosing protected health information inappropriately but for positive intentions.
- Does not make clear that “treatment” for many Federally-funded recipients is multi-systemic.

- Does not make clear the definition of “minimum necessary” protected health information to fulfill a request since it is based on the circumstances of the particular request and the individual’s situation.

The following, however, outlines how HIPAA is supportive of information sharing:

- The federal protections are not to interfere with patient access to or the quality of health care delivery.
- It is carefully balanced to avoid creating unnecessary barriers to the delivery of quality health care.
- Sharing is encouraged if the prohibition would result in unnecessary interference with access to quality health care or certain other important public health benefits.
- Permitted to share to the individual or designee of individual.
- Permitted to share for treatment, payment, or health care operations.
- Treatment includes the provision, coordination, or management of health care and related services among health care providers regarding the individual.
- Lengthy list of exceptions to the privacy protections and the requirement for a written authorization.
- Highlighted is permission to share if required by state law, including to human services entities and courts.
- An exception for a court order or subpoena with prior notice to the individual.
- Clear description of the elements of and required statements in an appropriate authorization.
- Encourages policies and procedures on how protected health information is used, disclosed, and requested for specific purposes.
- Encourages policies and procedures to develop reasonable criteria for determining the “minimum necessary” protected health information to accomplish purpose of request.
- Policies and procedures should identify persons/classes of persons who need access to information to carry out job duties, categories or types of protected health information needed, and conditions appropriate to such access.

A governmental or private provider receiving federal funding through Medicaid or Medicare is a Human Services Organization offering an array of health services (physical, mental, drug and alcohol) and human services (housing, employment, children’s services). The entire entity is designated as a covered entity under HIPAA, so that information can be shared between different individuals within the organization providing services to the same person, on a need-to-know basis and only the minimally necessary information.

This integrated, multi-service public agency is the legal entity with one director, various co-located disciplines, and a centralized administrative unit. The agency has one set of policies and procedures and provides integrated services. The agency's confidentiality notice, provided to all clients at the initial contact, lists the specific various disciplines comprising the covered entity and states that information will be shared within the integrated multi-service public agency. Patients are provided an "opt out" alternative to restrict information sharing by designating a particular type of service information not to be shared with other disciplines. In addition, the agency provides a specific authorization for certain information including protection of the location of an abused person, domestic violence, HIV and AIDS, and the alcohol and substance abuse treatment services. HIPAA permits the sharing of protected health information within the agency without requiring specific and separate authorizations under all of the applicable federal laws for the purposes of treatment and other related health services. In this scenario, the HIPAA definition of treatment permits a health care provider to offer or coordinate social, rehabilitative, or other services as long as they are associated with and related to the provision of health care.⁸

States may have more stringent privacy and security laws and regulations than Federal laws. If so, the state law prevails. For this Toolkit and regarding sharing of health information, New York state law defines that any youth who is 16 years of age or old is able to give consent for healthcare information to be shared, but regarding other more stringent privacy and security restrictions on the sharing of health information, New York law provides no further guidance beyond federal law and regulation. Where New York State law is silent, health and human service providers must look to Federal guidance. There, from a policy perspective, confidentiality and HIPAA cannot be an excuse for communications breakdowns. Instead, New York State policy makers must set the goal of appropriate information sharing and have the different agencies determine how best to accomplish the goal.

Sharing Information

In New York State, the issue is not specifically who can consent to the release of patient information, but rather who has the right to request it. The Public Health Law provides that a "qualified person" can request patient information. Qualified person includes the parent or guardian of a child under the age of 18, and the child once he/she becomes 18. The Public Health Law also allows but does not require a child over the age of 12 to be notified of a request for his patient information to be reviewed and also allows but does not require the medical provider to comply with such a child's refusal to consent. Thus the consent of a child under the age of 18 to the release of his medical information is not required. However, once the child has reached the age of 18, he is entitled to a copy of his patient information [PHL§18(2)(d)], subject to potential restrictions as spelled out in §18(3).

The New York State Department of Health has guidance in place to determine whether or not information is protected by HIPAA.⁹ Also, there is an official New York State form to authorize the release of health information under HIPAA¹⁰. Information protected by HIPAA is that which could be used to identify the individual patient, or protected health information. Such individually identifiable health information includes both the demographic information about a patient (name, address, employer, etc.) and the medically related information (diagnosis, treatment, condition,

⁸Federal Register, Volume 65, No. 250, December 28, 2000/Rules and Regulations at 82628.

⁹http://www.health.ny.gov/regulations/hipaa/pdf/hipaa_preemption_charts.pdf

¹⁰http://www.nycourts.gov/forms/hipaa_fillable.pdf

medications prescribed, etc.). It includes past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual.

Therefore, as a general rule, all individually identifiable health information is confidential and protected under HIPAA.

The next question is when can protected health information be disclosed and shared? There are three general circumstances when such information can be shared:

1. **For treatment, payment and health care operations**—important when dealing with individual case information, especially when looking at “treatment.” Examples of treatment include the provision, coordination, or management of health care and related services for an individual by one or more health care providers (between doctors, nurses, medical technicians, hospital social workers, hospice workers), including consultation between providers regarding a patient and referral of a patient by one provider to another. Treatment is not limited to medical services but rather is a holistic approach to include human services related to the health treatment. Treatment includes related services that are HHS-funded areas that are related to the health care. Payment activities include billing and collections, utilization review, reviewing health care services for medical necessity determinations, coverage, justification of charges, and determining eligibility and coverage. Health care operations include quality assessment and improvement, credentialing and peer review, compliance, auditing services, business planning and development, legal services, training health care and non-health care professionals, accreditation, certification, and licensing.
2. **For other purposes if the patient has authorized the disclosure**—Important when serving an individual across different systems. For example, one option for the Health Passport Project to succeed is if there is a trusting relationship between the individual parent/guardian and the child welfare social worker, it will be much easier to obtain the authorization.
3. **For certain public and research purposes**—Can occur even if the patient has not authorized the disclosures, for research, planning, and program effectiveness and not case-specific situations.

There are the twelve exceptions to the rule, allowing protected health information to be shared without authorization:

1. Victims of abuse, neglect, or domestic violence.
2. Judicial and administrative proceedings.
 - Court or administrative tribunal order.
 - Subpoena if certain assurances regarding notice to individual and ability to request a protective order is provided.

3. Law enforcement purposes.
 - Required by law (court orders, court-ordered warrants, subpoenas).
 - To identify or locate a suspect, fugitive, material witness, or missing person.
 - In response to request for information about victim or suspected victim of a crime.
 - To alert law enforcement of a person's death if there is a suspicion that criminal activity caused the death.
 - When health care provider believes that protected health information is evidence of a crime that occurred on its premises.
 - Medical emergency not occurring on its premises, when necessary to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victim, and the perpetrator of the crime.
4. Incidental use and disclosure (e.g., a sign-in sheet at a doctor's office).
5. Public interest and benefit activities.
 - Required by law (e.g., statute, regulation or court orders).
6. Public health activities.

Examples include:

 - Public health authorities for prevention and controlling disease, injury, or disability.
 - Government authorities authorized to receive reports of child abuse and neglect.
 - Entities, products and activities subject to the Food and Drug Association (FDA).
 - Individuals who may have contracted or been exposed to communicable disease when notice is authorized by law.
 - Employers in compliance with Occupational Safety and Health Administration or similar state law.
7. Uses and disclosures with opportunity to agree or object.

Example: asking a patient who to contact in case of emergency, or incapacitation, or not available.
8. Decedents (e.g., funeral directors, coroners, medical examiners).
9. Cadaveric organ, eye, or tissue donation.
10. Serious threat to health or safety.
11. Essential government functions.
12. Research, under a number of stringent circumstances.

What Information is Shared

The information shared should be limited to the minimum necessary. Careful thought must be given by the Policy Subcommittee to the inclusion of information. The Subcommittee must view the specific information to be shared through the lens of a day-to-day practice perspective in order to improve the outcomes for the client and to be more efficient in service delivery. What information does the caseworker need to improve the outcomes for the client? The Policy Subcommittee should consult with the medical experts to determine the information most needed to accomplish improving outcomes. The task is to get the minimum information necessary and nothing that is unnecessary. This kind of specificity is time-consuming but critically important.

The TANF agency is serving with adults with diabetes who are not employed because of medical-related reasons. Based on a longitudinal review, this group is growing exponentially, negatively affecting the TANF agency's desire to achieve its self-sufficiency goals and for the state agency that provides Medical Assistance to this group. The Medicaid agency sees its costs for this population

increasing both in medication and emergency room visits and inpatient stays. The Agency leaders have agreed to work together to improve the health and self-sufficiency outcomes for this population, and to decrease the growing costs to the government. The proposed solution and the “why” for the project is to insure that these persons are seen regularly by their Primary Care Physicians (PCP) with preventive care visits. The TANF and Medical Assistant Agencies have assigned one supervisory unit from each agency to work on these cases through an integrated case management model. What is the minimum necessary information to be shared?

- Identity of person.
- Diagnosis of diabetes.
- Receiving TANF for diabetes-related reasons.
- Name of Primary Care Physician (PCP).
- Date(s) of upcoming appointments with PCP.
- Did the person attend the appointment? If not, the operations manual for the project designates follow-up contact by the TANF case manager as to reasons and working on solution to the problem (e.g., a need for transportation or child care).
- Is patient following the medication regimen? If not, follow-up contact by the Medical Assistance case manager as to reasons and working on solutions to the problem (e.g., finding a pharmacist to accept the insurance).
- Any other preventive measure required for the patient.(e.g., weight loss due to obesity?) If so, is the patient following the medication regimen? (Designation of one of the case managers for follow-up based on the nature of the additional issue).

For Child Health Passport, the Policy Subcommittee must consider specific information to include. The following are some basic elements that seem important:

- Diagnosis and diagnosis history
- Immunizations
- Results of E.P.S.D.T. tests
- Name of primary care practitioner
- All medications
- Allergies
- Current and past practitioners

Who Receives Shared Information

Even when information can be shared under one of the three general circumstances of the HIPAA Privacy Rule or under one of the twelve exceptions, the information should be provided only to a person who has a need to know for legitimate purposes.

The Policy Subcommittee must determine the individuals requiring access to this information, including job classifications and specific units involved. For example, a job classification of case worker and supervisor may apply in several units. Therefore, the Subcommittee must limit access to those persons involved with the clients, the supervisory chain for those staff persons, and any other persons involved with the direct contact to the clients. The Subcommittee then should review persons within the agency ancillary to the project. This may include quality management/assurance staff and others. For any person not involved either directly with the client or with the staff person working with the client, the Subcommittee must be explicit in their reasoning for granting access to the individual client information.

How to Share Information

The Legal Subcommittee needs to first determine if the entity or entities are covered by HIPAA. If not, there may be no HIPAA-related issues involved. The law is specific as to what type of entity is covered and what type of entity is not covered. New York State law defines that any youth who is 16 years of age or old is able to give consent for healthcare information to be shared, but provides no further guidance beyond HIPAA. Therefore, health and human service providers must look to Federal guidance.

If the decision is made that the entity is covered, which will not likely be true for the OCFS Child Health Passport except the medical providers providing information, then the next question is whether the requested and shared information is indeed protected health information under the applicable federal laws. Not all information is protected and a careful review should occur. If the information is protected, does it fall within one of the exceptions to HIPAA? This question also includes looking at other jurisdictions where the same or similar information sharing arrangements have been developed to determine how that jurisdiction reached their decisions.

If the decision is that the information is protected, the lawyers must look at how other jurisdictions are successfully sharing health information for case management purposes and review the options:

1. Is a state law or state law amendment appropriate for enabling this information to be shared for the purpose of improving outcomes for persons and for government to be more effective and efficient, with the necessary safeguards provided to the information once shared? A first draft of such New York draft legislation is attached specifically for the OCFS Child Health Passport.
2. Is an authorization used by both systems the appropriate vehicle to enable the information to be shared? If so, the Legal Subcommittee should draft such and provide to the Agency Heads for review and distribution to internal government and external partners and interested and involved groups for comment and input. Should the authorization be drafted so that the client “opts in” or “opts out” of the information sharing opportunity? Copies of both “opt in” and “opt out” authorization and privacy statements are referenced for consideration.
3. Can the legal entity be classified as the covered entity for HIPAA purposes? If so, can information be shared for treatment purposes between health and human services case managers who are part of the covered entity? Are these other services within the definition of treatment to help provide, coordinate or manage health care? HHS has determined that this definition allows health care providers to coordinate or offer social, rehabilitative and other services that are associated with the provision of the health care for that individual. The service must be related to the health care but does not have to be medical in nature pursuant to the definition.¹¹
4. Is the patient/client group involved in on-going court proceedings? Regarding the OCFS Child Health Passport project, the answer is that children in foster care are involved in on-going court proceedings. Thus, in working with the appropriate court officials, can a court order be crafted and used to enable the information sharing to occur? Attached is a first draft of such a model court order for the OCFS Child Health Passport project to consider.

The Legal Subcommittee’s recommendations are then based on their interpretation of the applicable Federal and New York State laws governing the confidentiality of health information and a review of legal interpretations reached in other jurisdictions where such information is being shared.

¹¹Federal Register, Vol. 65, No. 250, December 28, 2000.

Health

Federal Law	New York State Law
<p>Health and Insurance Portability and Accountability Act (HIPAA) of 1996</p> <p>Public Law 104-191</p> <p>42 USC §201 et seq.</p>	
<p>45 CFR §§160, 164, as amended, and Subparts A & E of Part 164 Privacy Rule, 45 CFR Part 160 and Subparts A and E of Part 164</p>	<p>Balanced to provide strong privacy protections that do not interfere with patient access to, or quality of, health care delivery.</p> <p>Section 18(1)(g) of the Public Health Law defines a “qualified person” who can request patient information as, among other persons or entities, the “subject” who is the individual concerning whom patient information is maintained or possessed by a health care provider [PHL §18(1)(h)] and also the parent or guardian of an infant, which means of a child under the age of 18. Section 18(3)(c) of the Public Health Law allows but does not require a child over the age of 12 to be notified of a request for his/her patient information to be reviewed and also allows but does not require the medical provider to comply with such a child’s refusal to consent. Thus the consent of a child under the age of 18 to the release of his/her medical information is not required. However, once the child has reached the age of 18, he/she is entitled to a copy of his or her patient information [PHL§18(2)(d)], subject to potential restrictions as spelled out in §18(3).Note that under §18(1)(e), the limits on disclosure do not apply to persons pursuant to a court order.</p> <p>Limitations on access. (a) Upon receipt of a written request by a qualified person to inspect or copy patient information, a practitioner may review the information requested. Unless the practitioner determines pursuant to paragraph (d) of this subdivision that (i) the requested review of the information can reasonably be expected to cause substantial and identifiable harm to the subject or others which would outweigh the qualified person's right to access to the information, or (ii) the material requested is personal notes and observations, or the information requested would have a detrimental effect as defined in subdivision two of this section, review of such patient information shall be permitted or copies provided. (b) Upon receipt of a written request by a qualified person to inspect patient information maintained by a facility, the facility shall inform the treating practitioner of the request. The treating practitioner may review the information requested. Unless the treating practitioner determines, pursuant to paragraph (d) of this subdivision that the requested review of the information can reasonably be expected to cause substantial and identifiable harm to the subject or others which would outweigh the qualified person's right of access to the information or would have a detrimental effect as defined in subdivision two of this section, review of</p>

such patient information shall be permitted or copies provided. (c) A subject over the age of twelve years may be notified of any request by a qualified person to review his/her patient information, and, if the subject objects to disclosure, the provider may deny the request. In the case of a facility, the treating practitioner shall be consulted. (d) The provider may deny access to all or a part of the information and may grant access to a prepared summary of the information if, after consideration of all the attendant facts and circumstances, the provider determines that (i) the request to review all or a part of the patient information can reasonably be expected to cause substantial and identifiable harm to the subject or others which would outweigh the qualified person's right of access to the information, or would have a detrimental effect as defined in subdivision two of this section, or (ii) the material requested is personal notes and observations. In conducting such review, the provider may consider, among other things, the following factors: (i) the need for, and the fact of, continuing care and treatment; (ii) the extent to which the knowledge of the information may be harmful to the health or safety of the subject or others; (iii) the extent to which the information contains sensitive material disclosed in confidence to the practitioner or treating practitioner by family members, friends and other persons; (iv) the extent to which the information contains sensitive materials disclosed to the practitioner or the treating practitioner by the subject which would be injurious to the subject's relationships with other persons, except when the subject is requesting information concerning himself or herself; and (v) in the case of a minor making a request for access pursuant to subdivision two of this section, the age of the subject. (e) In the event of a denial of access, the qualified person shall be informed by the provider of such denial, and whether the denial is based on the reasonable expectation that release of the information can reasonably be expected to cause substantial and identifiable harm to the subject or others which outweighs the qualified person's right of access to the information or on the reasonable expectation that release of the information would have a detrimental effect as defined in subdivision two of this section, or on the basis that the materials sought to be reviewed constitute personal notes and observations, and of the qualified person's right to obtain, without cost, a review of the denial by the appropriate medical record access review committee. If the qualified person requests such review, the provider shall, within ten days of receipt of such request, transmit the information including personal notes and observations as defined herein, to the chairman of the appropriate committee with a statement setting forth the specific reasons for which access was denied. After an in camera review of the materials provided and after providing all parties a reasonable opportunity to be heard, the committee shall promptly make a written determination whether the requested review of the information can reasonably be expected to cause substantial and identifiable harm to the subject or others which outweighs the qualified person's right of access to the information pursuant to paragraph (d) of this subdivision or

whether the requested review would have a detrimental effect as defined in subdivision two of this section, or whether all or part of the materials sought to be reviewed constitute personal notes and observations, and shall accordingly determine whether access to all or part of such materials shall be granted. In the event that the committee determines that the request for access shall be granted in whole or in part, the committee shall notify all parties and the provider shall grant access pursuant to such determination. (f) In the event that access is denied in whole or in part because the requested review of information can reasonably be expected to cause substantial and identifiable harm to the subject or others which would outweigh the qualified person's right of access to the information, or would have a detrimental effect as defined in subdivision two of this section, the committee shall notify the qualified person of his or her right to seek judicial review of the provider's determination pursuant to this section: provided however, that a determination by the committee as to whether materials sought to be reviewed constitute personal notes and observations shall not be the subject of judicial review. Within thirty days of receiving notification of such decision, the qualified person may commence, upon notice, a special proceeding in supreme court for a judgment requiring the provider to make available the information for inspection or copying. The court upon such application and after an in camera review of the materials provided including the determination and record of the committee, and after providing all parties an opportunity to be heard, shall determine whether there exists a reasonable basis for the denial of access. The relief available pursuant to this section shall be limited to a judgment requiring the provider to make available to the qualified person the requested information for inspection or copying. (g) Where the written request for patient information under this section is signed by a distributee of a deceased subject for whom a personal representative has not been appointed, or from the holder of a power of attorney from such a distributee, a copy of a certified copy of the certificate of death of the subject shall be attached to the written request. (h) Where the written request for patient information under this section is signed by the holder of a power of attorney, a copy of the power of attorney shall be attached to the written request. A written request under this subdivision shall be subject to the duration and terms of the power of attorney. (i) The release of patient information shall be subject to: (i) article twenty-seven-F of this chapter in the case of confidential HIV-related information; (ii) section seventeen of this article and sections twenty-three hundred one, twenty-three hundred six and twenty-three hundred eight of this chapter in the case of termination of a pregnancy and treatment for a sexually transmitted disease; (iii) article thirty-three of the mental hygiene law; and (iv) any other provisions of law creating special requirements relating to the release of patient information, including the federal health insurance portability and accountability act of 1996 and its implementing regulations.

HHS/OCR guidance	According to the United States Department of Health & Human Services office of Civil Rights, the HIPAA Privacy Rule establishes a federal foundation for the protection for personal health information, but it is carefully balanced to avoid creating unnecessary barriers to the delivery of quality health care. As such, the Rule generally prohibits the use or disclosure of protected health information unless authorized by the individual, except where this prohibition would result in unnecessary interference with access to quality health care or with certain other important public benefits or national priorities		
1178(a)(1)	Supersedes state law with exceptions:		
160.203 (a) & (b)	Except if state law relating to privacy of individually identifiable health information is more stringent.		
164.502(a)	Except as otherwise permitted or required, covered entity may not use or disclose protected health information without specific written authorization by individual.		
164.502(a) 164.506	General Exceptions: Permitted Uses <ol style="list-style-type: none"> 1. To individual; 2. For treatment, payment, or health care operations; and 3. Incident to disclosure pursuant to a permitted use. 		
164.501	Treatment is defined as the provision, coordination, or management of health care and related services among health care providers regarding individual.		
674(16); 675(1)(C); 164.512(a)	Specific Exceptions: Required by State Law: Disclosure of protected health information if required by state law, including to human services agencies and to courts	Public Health Law §18(1)(e):	The limits on disclosure do not apply to persons pursuant to a court order.
164.512(e)	Specific Exceptions: Court Order:		

	Pursuant to a subpoena or court order with notice to individual for an opportunity to object; court order must limit the use and disclosure of the protected health information and must provide for the return of the information to the provider or the destruction of the information when no longer needed for purpose for which it was provided.		
164.514(a) & (b)	Specific Exceptions: De-identified Information: Health information that does not identify an individual and there is no reasonable basis to believe that information can be used to identify individual is not individually identifiable health information.		
164.512(a) & (b)	Specific Exceptions: Public Health Activities: Covered entity may disclose protected health information for public health activities and purposes.		
164.512(c); 164.512(f)	Specific Exceptions: Disclosures about victims of abuse, neglect or domestic violence.		
164.502(a)(1); 164.502(a)(2)	Specific Exceptions: Signed Valid Authorization For use/disclosure of protected health information for purposes other than payment, treatment and health care operations. There are other specific exceptions, including but not limited to psychotherapy notes.		
164.508(c)(1), (2), (3), (4), (5) & (6)	Core elements of valid authorization and required statements: <ol style="list-style-type: none"> 1. Description of information to be used/disclosed that identifies information in a specific & meaningful fashion; 2. Name or other specific identification of person(s), or class of persons, authorized to make the requested use/disclosure; 3. Name or other specific identification of person(s), or class of persons, to 		

	<p>whom the covered entity may make the requested use/disclosure;</p> <ol style="list-style-type: none"> 4. Description of each purpose of requested use/disclosure (may be “at request of individual”); 5. Expiration date/expiration event that relates to individual or purpose of use/disclosure; and 6. Signature of individual and date of signature. If authorized signed by personal representative of individual, description of such representative’s authority to act for individual. 		
164.508(c)(2)	<p>Required statements on authorization:</p> <ol style="list-style-type: none"> 1. Individual’s right to revoke authorization in writing, and either: <ol style="list-style-type: none"> a. Individual’s right to revoke and description of how individual may revoke; or b. To extent that information requires notice, then reference to covered entity’s notice. 2. Ability/inability to condition treatment, payment or health care operations on authorization by stating either: <ol style="list-style-type: none"> a. Covered entity may not condition treatment, payment or enrollment or eligibility for benefits on whether individual signs authorization; or b. Consequences to individual of a refusal to sign authorization when covered entity can condition treatment, enrollment or eligibility for benefits on failure to obtain authorization. 3. Potential for information disclosed to be subject to re-disclosure and no longer be protected. 		

164.508(b)	<p>Consent vs. Authorization</p> <p>A covered entity may voluntarily choose, but is not required, to obtain a written consent to use and disclose protected health information for treatment, payment, and health care operations. A written consent is not a valid permission to use or disclose protected health information for a purpose that requires an “authorization” under Privacy Rule, or other requirements for use or disclosure of protected health information.</p>		
164.522(a)(i)	<p>Consent Restrictions</p> <p>Individuals have the right to request restrictions on how a covered entity uses/discloses protected health information for treatment, payment, and other health care operations. Covered entity is not required to agree to restriction request, but is bound by any restrictions to which it agrees.</p>		
164.502(a)(1)(iii)	<p>Incidental Uses & Disclosures</p> <p>Permits customary and essential communications and practices of protected health information to occur when covered entity has in place reasonable safeguards and minimum necessary policies and procedures to protect privacy. Reasonable safeguards vary from covered entity to covered entity.</p>		
164.502(b)(1)	<p>Standard Rules if Permitted Use of Information</p> <p>When using or disclosing protected health information or when requesting protected health information from another covered entity, must make reasonable efforts to limit protected health information to minimum necessary to accomplish purpose of use, disclosure, or request.</p>		
164.502(b)(1) & 164.514(d)(4)	<p>Minimum Necessary Information</p> <p>Need to have policies and procedures to limit the use, disclosure, and requests for protected health information.</p>		
164.502(b)(2) &	<p>Exceptions to minimum</p>		

164.514(d)(4)	<p>necessary rule:</p> <ol style="list-style-type: none"> 1. Disclosures to/requests by health care provider for treatment purposes; 2. Disclosures to individual who is the subject of the information 3. Use/disclosure made pursuant to individual's authorization 4. Use/disclosure required for compliance with HIPAA Administrative Simplification Rules 5. Disclosures to HHS for enforcement purposes 6. Use/disclosure required by other law 		
164.514(d)(3)(i)	<p>Disclosures of Protected Health Information: Routine or recurring requests and disclosures</p> <p>Standard protocols may limit the protected health information disclosed or requested to minimum necessary.</p>		
164.514(d)(3)(ii)	<p>Disclosures of Protected Health Information: Non-Routine</p> <p>Covered entity must develop reasonable criteria for determining and limiting disclosure or request to only minimum amount of protected health information necessary to accomplish purpose of request. Each must be reviewed on an individual basis.</p>		
164.514(d)(3)(iii); 164.512(b)	<p>Reasonable Reliance:</p> <p>Permits covered entity to rely on judgment of party requesting disclosure as to the minimum amount of information that is needed; when request is made by:</p> <ol style="list-style-type: none"> 1. Public official for public health purposes 2. Another covered entity 3. Professional who is a workforce member/business associate 4. Researcher with IRB/Privacy Board 		

	documentation		
HHS/OCR guidance	Use of Protected Health Information: Covered entity's policies and procedures must identify persons or classes of persons who need access to information to carry out job duties, categories or types of protected health information needed, and conditions appropriate to such access.		
164.502(g)(1)	Personal representatives: Must be treated as the individual in making health care related decisions, uses and disclosures of protected health information. When individuals are legally or otherwise incapable of exercising their rights or simply choose to designate another to act on their behalf.		
164.524(a)(3)(ii)	Personal representative has access to individual's protected health information to the extent such information is relevant to such representation and can authorize disclosure of protected health information.		
164.502(g)(3)(ii)	Amount of power of personal representatives over health care decision derives from his/her authority under state law to make health care decisions. Treatment of personal representative depends on amount of power (i.e., broad authority or limited authority). Examples of broad authority are a parent, a minor or legal guardian over mentally incompetent adult, a person with legal authority to act on behalf of a deceased individual or estate. Example of limited authority is a limited health care power of attorney regarding only a specific treatment.		
164.502(g)(2); HHS/OCR guidance	Examples of Personal Representatives: For an Adult: 1. Person with legal authority to make health care decisions on behalf of individual		

	2. Health care power of attorney; court appointed legal guardian; general power of attorney.		
164.502(g)(3)(i); 164.502(g)(3)(ii); HHS/OCR guidance	<p>Examples of Personal Representatives: For an Emancipated Minor</p> <ol style="list-style-type: none"> 1. Person with legal authority to make health care decisions on behalf of individual 2. Health care power of attorney; court appointed legal guardian; general power of attorney 		
164.502(g)(3)(i)	<p>Examples of Personal Representatives: For a Minor Child</p> <p>Defers to state or other applicable law that addresses ability of parent, guardian, or other person acting <i>in loco parentis</i> (“parent”) with legal authority to make health care decisions on behalf of minor child.</p>		
164.502(g)(3)(i); 164.502(g)(3)(ii); HHS/OCR guidance	<p>Examples of Personal Representatives: For a Minor Child</p> <p>State law determines whether to permit/prohibit covered entity to disclose/provide access to a parent of minor child’s protected health information.</p>		
164.502(g)(3)(ii)(C); HHS/OCR guidance	<p>Examples of Personal Representatives: For a Minor Child</p> <p>If state law is silent or unclear concerning parental access to minor’s protected health information, covered entity has discretion to provide or deny parent with access if:</p> <ol style="list-style-type: none"> 1. Decision is made by licensed health care professional in exercise of professional judgment; and 2. Consistent with state/other law 		

HHS/OCR guidance	<p>Four exceptions when parent is not the “personal representative” for minor child:</p> <ol style="list-style-type: none"> 1. When state or other law does not require consent of a parent/other person for minor to obtain particular health service and minor only consents to health care service; 2. When court determines or other law authorizes someone other than parent to make decisions; 3. When parent agrees to a confidential relationship between minor and physician; or 4. When covered entity reasonably believes that individual has been or may be subject to domestic violence, abuse, or neglect by personal representative, or that treating person as individual’s personal representative could endanger the individual, covered entity may choose not to treat the person as the personal representative if, in exercise of professional judgment, doing so would not be in best interests of individual. 		
HHS/OCR guidance	<p>Examples of Personal Representatives: Deceased Person:</p> <ol style="list-style-type: none"> 1. Person with legal authority to act on behalf of decedent or estate (not restricted to health care decisions); 2. Executor of estate; 3. Next of kin or other family member; or 4. Individual with durable power of attorney. 		

164.510(b)(1)(i); 164.510(b)(1)(ii)	<p>Situations in which persons are involved in individual's health care but not expressly authorized to act on individual's behalf:</p> <ol style="list-style-type: none"> 1. Family member or other relative or close family friend of individual; 2. To notify or assist in notification or locating a family member, a personal representative or another person responsible for care of individual of individual's location, general condition, or death; 3. Provide individual with opportunity to object to disclosure and individual does not express objection; or 4. Reasonably infers from circumstances, based on exercise of professional judgment, that individual does not object to disclosure. 		
164..502(e) 164.504(e) 164.532(d) & (e)	Business Associates Privacy rule permits covered entities to disclose protected health information to "business associates."		
164.502(e); HHS/OCR guidance	Covered entity must assure that business associate will use information only for engaged purposes, will safeguard information from misuse, and will help covered entity comply with privacy rule duties.		
164.502(e); HHS/OCR guidance	Covered entities may disclose information solely for business associate to help covered entity carry out its health care functions and not for the business associate's independent use or purposes.		

HHS/OCR guidance	Business Associate Functions and Activities Payment, health care operations activities, claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, or re-pricing.		
HHS/OCR guidance	Business Associate Services: Legal, actuarial, accounting, consulting, data aggregation, management, administrative, transcription, accreditation, and financial.		
164.504(e)	Business Associate Contracts: Must describe permitted and required uses of protected health information, provide that business associate will not use or further disclose protected health information other than permitted or required by contract or law, and require business associate to use appropriate safeguards to prevent a use or disclosure of protected health information other than as prescribed for by contract.		
164.502(e)	Exceptions to Business Associate Standard Do not require a business associate contract before protected health information may be disclosed: <ol style="list-style-type: none"> 1. To a health care provider for treatment of individual; 2. To health plan sponsor (i.e., employer) by group health plan or by health insurance issuer or HMO; 3. By health plan that is a public benefits program (i.e., Medicaid; Medicare) and agency administering health plan (i.e., HHS) to determine eligibility, 		

	<p>enrollment;</p> <ol style="list-style-type: none"> 4. By health provider to health plan for payment purposes; 5. If disclosure would be incidental (i.e., janitorial service); 6. Works as conduit for information (private courier); 7. To organized health care arrangement (OHCA); 8. To researcher for research purposes (but requires consent from individual, or pursuant to waiver (164.512(i)) or as a limited data set (164.514(e)); or 9. When financial institution processes consumer-conducted financial transactions by debit, credit, payment card, check, or electronic money transfer. 		
<p>164.501; 164.508(a)(2) 164.524(a)(1); 164.524(a)(2)(i)</p>	<p>Psychotherapy Notes</p> <p>Excluded from disclosure except with valid specific authorization, Must be maintained separately from the remainder of the record.</p> <p>May be denied access without providing opportunity for review.</p>		

Mental Health and Drug & Alcohol

Sharing Mental Health and Drug & Alcohol Treatment Information
with Other Systems

Because children in foster care are involved with multiple systems, including education, health, mental health, Medicaid, and others, a coordinated, multi-system approach is necessary to meaningfully improve outcomes for this population.¹²

The importance of sharing mental health and drug and alcohol treatment information is especially true for children and youth in foster care. It has been shown again and again that children and youth removed from abusive and neglectful homes are among the most vulnerable and exhibit more numerous and serious medical conditions, including mental health conditions, than other children.¹³ The treatment for these conditions may include the prescription of psychotropic medications. While proven to effectively treat mental disorders in adults, when prescribed for children there are additional questions as to the safety and effectiveness of psychotropic medications. In a recent GAO study, children in foster care were prescribed psychotropic drugs at higher rates than were children not in foster care. The pattern of such prescription of psychotropic drugs was 2.7 to 4.5 times higher among children in foster care in the age ranges of zero to 5 years old, 6 to 12 years old, and 13 to 17 years old.¹⁴

Compared with children in the general population, children entering foster care have much higher rates of serious emotional and behavioral problems and developmental days.¹⁵

Many children in foster care have had exposure to trauma that can lead to more and more severe emotional and behavioral issues than children living in their own homes. Also, unlike children living with their own parent or guardian, children in foster care have the additional challenge of coordination of mental health care. Such coordination can be disjointed due to movements in placement, resulting in changes in prescribers and treatment providers, repeated and possibly unnecessary and costly evaluations, interrupted medical information sharing, and increased evaluations recommending new medications, multiple drug “cocktails,” and/or increased dosages.

¹² *Testimony of Former ACF Commissioner Bryan Samuels before the Senate Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, December 1, 2011, page 14.*

¹³ GAO, Foster Care: State Practices for Assessing Health Needs, Facilitating Service Delivery, and Monitoring Children’s Care, GAO-09-26 (Washington, D.C.: Feb. 6, 2009)

¹⁴ GAO, Foster Children: HHS Guidance Could Help States Improve Oversight of Psychotropic Prescriptions, GAO-12-201 (Washington, D.C.: December 15, 2011)

¹⁵ “Improving Health Outcomes For Children in Foster Care: The Role of Electronic Record Systems”, *The Children’s Partnership* (Fall 2008).

Multiple foster care placements prevent an individual familiar with the child from coordinating and overseeing the provision of medical care.¹⁶

The GAO study of psychotropic prescription claims children in foster care showed higher rates of potential health risk indicators, based primarily on three prescribing practices:

- Concomitant prescriptions of five or more medications;
- Medication dosages exceeding maximum levels in FDA-approved drug levels; and
- Prescriptions for infants.¹⁷

These practices have long-term as well as short term health impacts. Increasing the number of psychotropic drugs used at the same time increases the likelihood of long-term physical health side effects.¹⁸

Regarding the mental health and well-being of children in foster care, the American Academy of Child and Adolescent Psychiatry (AACAP) published best principles for states to follow monitoring programs of prescribing psychotropic medications for youth in state custody. The AACAP guidelines state that “as a result of several highly publicized cases of questionable inappropriate prescribing, treating youth in state custody with psychopharmacological agents has come under increasingly intense scrutiny.” Although the AACAP Best Practices guidelines are not mandated and only suggestions, Congress has passed several laws, including the Child and Family Services Improvement and Innovation Act, requiring states to establish protocols for the appropriate use and monitoring of psychotropic drugs prescribed to children in foster care.

Another important reason to share information regarding mental health and drug and alcohol addiction is the cost to the government for continuing to act in silos. For example, children in foster care comprise 3% of the total Medicaid population under age 18, but this population comprises 32% of the recipients of behavioral health services in the same population group.¹⁹ The over-prescription of psychotropic medications cited in the GAO report results in both short and long-term costs.

In addition to the mental health and drug and alcohol treatment services for children involved with the children and family services system, it must also be noted that mental health issues and drug and alcohol abuse plays an important and growing reason for the child abuse and neglect. Children are likely in foster care due to the consequences of the parent or guardian’s mental health conditions and/or use of drugs and alcohol. In order to determine appropriate permanency decisions for these children, the child and family services system must have accurate and complete information about the parent’s ability to provide a safe and permanent home. Reasoned decisions about safety, risk, and permanency made by children and family services systems and courts require clear and sufficient information.

¹⁶ (Leslie et al., Multi-State Study on Psychotropic Medication Oversight in Foster Care, *Tufts Clinical and Translational Science Institute* (Boston, Mass.: 2010))

¹⁷ GAO-12-201 at page 12.

¹⁸ GAO-12-201 at page 14.

¹⁹ Center for Health Care Strategies, Inc., Analysis of Medicaid Claims Data for 2005.

In 2010, in Marion, Polk and Yamhill Counties in Oregon, there were 1,481 victims of child physical, sexual, or emotional abuse and neglect and 2,165 children spent time in foster care because they could not remain safely at home. Parental drug and alcohol issues were the largest single factor in 44% of child abuse cases. After drug and alcohol, the next largest single factor was domestic violence.²⁰

On November 23, 2011, HHS sent a letter to all state child welfare, Medicaid, and mental health authority directors signed by George Sheldon, then Acting Assistant Secretary, Administration for Children and Families (ACF), Donald Berwick, Administrator, Centers for Medicare and Medicaid Services (CMS), and Pamela Hyde, Administrator, Substance Abuse and Mental Health Services Administration (SAMHSA). The subject of the letter was the growing concern about the safe, appropriate, and effective use of psychotropic medications among children in foster care. A statistic cited was that only 3% of children covered by Medicaid were children in foster care, but a recent study of claims in 16 states, the foster care children were prescribed antipsychotic medications at nearly nine times the rate of other children receiving Medicaid. The letter encourages the three systems to jointly study and monitor this problem. For New York, such an initiative would include information sharing between OCFS and the Medicaid system and for the two agencies to work on overcoming confidentiality barriers to improve services and to improve the outcomes for these children.

Legislation and Drug and Alcohol Treatment Information Sharing

Each state's law determines consent rights for mental health treatment for minors and minors in state custody. This presents its own particular issues when dealing with psychotropic medications. For example, in Florida, the parent or legal guardian can consent; the foster care agency cannot and must seek court authorization. Maryland permits both the parent/legal guardian and the local social services director to consent. Massachusetts and Michigan require court approval. In Oregon, the Department of Human Services could consent as legal guardian but youth 14 years old or older may consent themselves. Pennsylvania permits the parent to consent but also youth 14 years or older may consent themselves. Texas has a process where the court can order an individual or state department to consent, and a youth 16 years or older may also consent themselves if the court determines the child has sufficient capacity. In New York State, a child 16 or older can consent to a voluntary admission to a psychiatric facility²¹ and an application for admission as an involuntary patient can be made by the director of the division for youth, a social services official or authorized agency which has care and custody or guardianship and custody of a child over the age of sixteen or a person or entity having custody of a child pursuant to an order issued under section seven hundred fifty-six (PINS) or one thousand fifty-five of the family court act (neglect or abuse).²²

²⁰ *Statesman Journal*, April 8, 2012.

²¹ *NY Mental Hygiene Law*, §9.13

²² *NY Mental Hygiene Law*, §9.27

Federal laws regarding children in foster care encourage information sharing while at the same time providing strong confidentiality protections for all substance abuse and alcohol abuse services. Under the Fostering Connections to Success and Increasing Adoptions Act, the state children and family services system is required to develop a plan for ongoing oversight and coordination of health and behavioral health care agencies for the children and youth in their custody. Relating to both physical and mental health issues, the children and family services agency must coordinate with the state Medicaid agency to improve the coordination of services, ensure appropriate assessments and treatment, and share critical information (“minimally necessary” and “need to know”) with appropriate providers. Under the Child and Family Services Improvement and Innovations Act, OCFS has developed protocols on the appropriate use of and oversight of all prescription drugs, medications and psychotropic medications to serve children entering foster care who have experienced emotional trauma. See, OCFS Informational Letter, 08-OCFS-INF-02 (February 13, 2008: The Use of Psychiatric Medications for Children and Youth in Placement; Authority to Consent to Medical Care. Also, see 18 NYCRR 441.22 “Health and Medical Services” and 18 NYCRR 507, et seq. Health Supervision and Medical Care for Children.

One key challenge when dealing with the Federal law covering drug and alcohol treatment is the conflict between sharing information to provide the best possible services and the importance of alleviating fear of compromised privacy and confidentiality which might result in a person not seeking needed treatment.

To address this, Federal law is prescriptive on how such information can be shared:

- Applicable to treatment and services records if conducted, regulated, assisted, or funded in any way, directly or indirectly, by Federal government.
- Very clear language provided as to the required elements of the written authorization to disclose information.
- Mandatory language to be included in authorization.

- Provides exceptions to confidentiality.

Confidentiality protections in Federal law include:

- Records of the identity, diagnosis, prognosis, or treatment of any patient maintained in the performance or activity relating to substance abuse or alcoholism or alcohol abuse education, prevention, training, rehabilitation, or research.
- Confidential forever, irrespective of whether or not person ceases to be a patient.
- State law cannot override Federal law but can be more restrictive.
- If permission to disclose is provided, removes prohibition but does not compel provider's disclosure; instead, program may disclose records in accordance with authorization.
- Very specific requirements regarding the procedures that a court must follow before issuing a court order.
- Conditions placed on the validity of a court order regarding disclosures of information.
- Additional conditions placed on disclosures for medical emergencies, research, management or financial audits, program evaluation, central registries, or the criminal justice system.

What Information is Shared

It will again be up New York State's Policy subcommittee to detail what information needs to be shared and who requires the information to perform their responsibilities. From a practice perspective, the Subcommittee must determine what specific information will improve outcomes for the client. As part of this determination, it is useful to consult with experts from the field.

The child welfare agency—with the goal of improving custody outcomes for parents with mental health issues—enters into a collaboration with the Medicaid agency, the local mental health agency, and the mental health providers. The collaborating agencies agree to exchange information regarding shared clients whose children are in foster care due to the safety issues presented by the parent's mental health issues. The “why” for the project is to insure that children do not remain in foster care if their parents are capable of providing for their safety and well-being. The child welfare agency requires information from the parent's mental health provider to make child permanency recommendations to the court. The child welfare, Medicaid, local mental health agency, and private mental health providers have assigned either a unit from each agency to work on these cases or a designated person through an integrated case management model. What is the minimum necessary information to be shared?

- Identity of person.
- Name of primary psychiatrist.

- Name of primary therapist.
- Date(s) of appointments during the last month.
- Appointments scheduled and kept.
- Adherence with prescribed medication regimen.
- Patient's network of natural supports (e.g., spouse, involved partner, involved family members, neighbors, friends, religious members).
- Professional assessment of whether or not the patient is capable of meeting the parental responsibilities of his/her children.

It should be noted that the diagnosis and types of medications are not required information for the exchange. Acquiring these details is beyond the scope of necessary information to determine the parenting capacity of the parent. Instead, information exchanged all relates, as it should, to the parent's ability to provide care and safety to his/her children.

For the Child Health Passport Project to be successful, the list of required information may be more exhaustive for the child, since the purpose of the Passport is to have a complete medical history of the child to ensure proper care and treatment. The Policy Subcommittee should review several drug and alcohol treatment and mental health treatment records to familiarize itself on the information contained therein. Early on, the Subcommittee should determine whether they want data (e.g., name of treatment facility and dates of treatment) and/or reports (e.g., treatment success). As for all information sharing projects, the answer cannot and should not be all information. Too much information is as counter-productive as too little information. Possible information to be included in the OCFS Child Health Passport Project:

- Diagnosis history of child.
- Psychotropic medication history of child including side effects if applicable.
- Treatment, including hospitalizations and residential, and service history of child and a short description of the result of treatment and service.
- Copies of psychiatric and psychological evaluations.
- Copies of drug and alcohol assessments.
- Copies of discharge summaries for treatment and service.

Who Receives Shared Information

Again, recipients of the information must include job classifications and specific units involved. Access must be limited to only those persons involved with the clients, the supervisory chain for those staff persons, and any other persons involved with the direct contact to the patients/clients. For any person not involved either directly with the patient/client or with the staff person working

with the patient, a strong and explicit case must be made for why they should have access to the individual client information.

Regarding the OCFS Health Passport project, the child's county social worker and supervisory chain are likely to require access, the child's private agency social worker and supervisory chain may require access, and others involved in clinical reviews, including continuous quality improvement, may require access to such information.

How to Share Information

As in the other areas, sharing of mental health or substance abuse treatment information will be accomplished through court orders, MOUs, authorization, or signed consent.

To determine the appropriate vehicle(s) for New York State, the Legal Subcommittee needs to determine if the applicable system, or entity or entities, are covered entities under HIPAA. If not, then there may be no HIPAA-related issues. It is easier to determine if the entity is regulated by the 42 CFR Part 2 rules and regulations covering drug and alcohol treatment services.

If the entity or entity is covered under HIPAA, the Subcommittee must then determine whether or not the requested information is protected health information under the applicable Federal laws. This is a much easier question when dealing with mental health and alcohol and drug treatment information. If the information is protected, the Legal Subcommittee must determine if it falls within one of the exceptions to HIPAA. Does 42 CFR Part 2 apply? Or for New York, is it one of the exceptions under the New York Mental Hygiene Laws? These questions should involve looking at other jurisdictions where the same or similar information sharing arrangements have been developed to determine how those jurisdictions reached their decisions.

Once that review occurs and is explained, the Legal Subcommittee must examine any relevant state laws to determine if there are any additional state requirements regarding confidentiality for mental health and alcohol and drug treatment information. In New York, a "qualified person" can request his/her own records. Qualified person²³ is defined as any properly identified patient or client, guardian of a mentally retarded or developmentally disabled person appointed pursuant to appropriate law and other legally appointed guardian of an infant who may be entitled to request access to a clinical record pursuant to paragraph three of subdivision (b) of this section. Inasmuch as qualified person includes the patient, when a minor receives mental health treatment without parental consent, treatment records generally may not be released to anyone without the patient's permission or unless required or permitted by law.²⁴

It is also important to know that when a child placed by a family court order is admitted to a psychiatric hospital, the child's custody is not changed and he or she remains the responsibility of the person or entity having custody under the court order.²⁵ The child can be released only to the custody of such person or entity if he or she remains in custody under a valid court order at the time of discharge from the hospital. If so, the facility in which the child is receiving treatment must plan

²³Mental Hygiene Law §33.16(a)(6)

²⁴Minor Consent Tiger Team, *Barriers to the Exchange of Pediatric Health Information*, July 2010.

²⁵The child can be in the custody of a social services official or authorized agency, the director of the division for youth or a person or entity granted such custody pursuant to section seven hundred fifty-six or one thousand fifty-five of the family court act.

the discharge of the child.²⁶ The facility shall prepare the plan in collaboration with the person or entity having custody of the child and it shall be the duty of such person or entity to cooperate with the facility in that effort.

Critically for the Child Health Passport, and subject to separate interagency agreements to be negotiated by the commissioner of mental health, the commissioner of social services, and the director of the division for youth, information derived from the clinical record as required by this section may be revealed to the person or entity having custody of the child, to the extent release of such information is necessary to assure adequate discharge planning.

When considering New York State’s Mental Hygiene law and other applicable laws, the Legal Subcommittee should answer the following questions:

1. Does New York’s mental hygiene law and the rules and regulations promulgated there under, allow this information to be shared for the purpose of improving outcomes for persons and for government to be more effective and efficient, with the necessary safeguards provided to the information once shared?
2. Is an authorization, used by both systems, the appropriate vehicle to enable the information to be shared? If so, the group should draft such a document and provide to the Agency leaders for review and distribution to the internal government and external partners and interested and involved groups for comment and input. Should the authorization be drafted so that the client “opts in” or “opts out” of the information sharing opportunity? Copies of both “opt in” and “opt out” draft authorization and privacy statements are attached for consideration by OCFS for the Child Health Passport project.
3. If the initiative is only dealing with mental health information, does the legal entity enable it to be classified as the “covered entity” for HIPAA purposes? If so, can information be shared for “treatment” purposes between health and human services case managers who are part of the covered entity? Can such human services be considered “other services” within the definition of treatment to help provide, coordinate or manage health care?
4. Is the patient/client group involved in on-going court proceedings (e.g., children in foster care; adult probation and parole)? If so, and in working with the appropriate court officers, can a court order be crafted and used to enable the information sharing to occur? A copy of such a draft court order is attached for consideration by OCFS to implement the Child Health Passport project.

²⁶*Mental Hygiene Law §29.15*

The Legal Subcommittees recommendations are then based on their interpretative consensus of the applicable Federal and New York State laws governing the confidentiality of mental health and/or alcohol and drug treatment information. A review of legal interpretations can be reached in other jurisdictions where such information is being shared.

Behavioral Health (Mental Health and Drug & Alcohol)

Federal Law		New York State Law	
Confidentiality of Alcohol and Drug Abuse Patient Records Title 42 C.F.R. Part 2, §2.2 at 42 U.S.C. dd-3 (alcohol) and 42 U.S.C. ee-3 (drug abuse) Section 507 of the Public Health Service Act, P.L. 98-24		Confidentiality of Alcohol and Drug Abuse, Mental Health and Developmental Disabilities Patient Records NY Mental Hygiene Law	
	<p>Two parts of the Act mirror each other in citations</p> <p>Overall purpose of law is to remove fear that privacy and confidentiality will be compromised by reason of the availability of the patient's record and therefore the patient does not seek treatment.</p>		
<p>All references to both 42 USC §290ee-(3)(a) and 42 USC §290dd-(3)(a)</p>	<p>Records of the identity, diagnosis, prognosis, or treatment of any patient maintained in the performance or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research (290ee-3(a)) and in the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research (290dd-3(a)) conducted, regulated, assisted, or funded directly or indirectly by federal government are confidential.</p>	<p>Mental Hygiene Law §22.05 Chemical Dependence Programs, Treatment Facilities, And Services – Patient's Records</p>	<p>MHL §22.05(a) After the admission of any patient, the director of a chemical dependence program or treatment facility shall, within five days excluding Sunday and holidays, forward to the office such information from the record in such time and manner as the commissioner shall require by regulation. Such information from the record in the office shall be accessible only in the manner set forth in sections 33.13 and 33.16 of this chapter. (b) All records of identity, diagnosis, prognosis, or treatment in connection with a person's receipt of chemical dependence services shall be confidential and shall be released only in accordance with applicable provisions of the public health law, any other state law, federal law and duly executed court orders.</p>

42 CFR §290-3(d)	Records are confidential forever, irrespective of whether or not an individual ceases to be a patient.		
42 CFR §2.12	Applies to treatment or rehabilitation programs, employee assistance programs, programs within general hospitals, school-based programs, and private practitioner who provide diagnosis, treatment, or referral for treatment.		
42 CFR §2.2	State law cannot override Federal law but can be more restrictive.		
42 CFR §2.1(b)(1)	Permitted disclosure by written consent with prior written consent of patient.		MHL §33.16 (a) 5. "Patient or client" means an individual concerning whom a clinical record is maintained or possessed by a facility as defined in paragraph three of this subdivision. 6. "Qualified person" means any properly identified patient or client, guardian of a mentally retarded or developmentally disabled person appointed pursuant to article seventeen-A of the surrogate's court procedure act, or committee for an incompetent appointed pursuant to article seventy-eight of this chapter or a parent of an infant, or a guardian of an infant appointed pursuant to article seventeen of the surrogate's court procedure act or other legally appointed guardian of an infant who may be entitled to request access to a clinical record pursuant to paragraph three of subdivision (b) of this section, or a parent, spouse or adult child of an adult patient or client who may be entitled to request access to a clinical record pursuant to paragraph four of subdivision (b) of this section.
42 CFR §2.1(b)(1); §2.1(b)(2)	Only to the extent, under the circumstances, and for the purposes clearly stated in the release of information.		
		Title 14	
		New York Code Rules and Regulations	
42 CFR §2.31	Required elements of written consent. <ul style="list-style-type: none"> Name or title of person/entity to which disclosure is to be made; Name of patient; 	14 NYCRR 510.6 Request for access to records	a) All requests to inspect or copy records which are subject to disclosure shall be made in writing and shall reasonably describe the records to which access is being sought. Such requests shall be directed to the appropriate records access officer. b) Persons requesting records which originated in any other State or Federal agency, but are currently in

	<ul style="list-style-type: none"> • Purpose of disclosure; • Amount and type of information to disclose; • Patient's signature; • Date of signature; • Statement that consent is subject to revocation except for actions already taken; • Date, event, or condition of consent expiration if not revoked; and • Specific language must be included: • This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or otherwise or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient 		<p>the possession of the office, shall be referred to the originating agency when there is a question concerning confidentiality requirements.</p> <p>c) Within five business days of receipt of a request for a record, the records access officer shall:</p> <ol style="list-style-type: none"> 1) make such record available to the person requesting access to the record pursuant to section 510.8 of this Part; 2) deny the request, pursuant to section 510.9 of this Part; or 3) provide a written acknowledgment of the receipt of the request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when the request will be granted or denied. If the records access officer determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within 20 business days from the date of the acknowledgment of the receipt of the request, the records access officer shall state, in writing, both the reason for the inability to grant the request within 20 business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part. <p>Failure by the records access officer to conform to the provisions of this paragraph shall constitute a denial.</p>
42 CFR §2.23	Patient can have access to own record, with or without written consent.		
42 CFR §2.3(b)	If circumstances exist for permission to disclose, removes prohibition but does not compel disclosure.	14 14 NYCRR 510.8 Granting of access to records	a) If access to a record is approved, the records access officer shall notify the requestor. If the record cannot be located after a diligent search, the records access officer shall so notify the requestor.

			<ul style="list-style-type: none"> b) The records access officer may delete from the record identifying details, which if not expunged would cause an unwarranted invasion of personal privacy, before inspection or copying. c) Records shall be available for inspection and copying by the public at the location(s) designated by the records access officer on every day that his or her office is open for the transaction of administrative business, between the hours of 9 a.m. and 4 p.m. d) Persons granted access to records may inspect the original records, without charge, at a time when his or her use of the record does not interfere with the normal functioning of the office. The requestor shall not remove original records from the office in which they are kept without permission. If photocopies of the records are requested, fees may be charged, not to exceed 25 cents per single-sided page not in excess of nine by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is prescribed by statute. At the discretion of the records access officer, a fee may be waived or reduced. Upon request, the records access officer shall certify in writing that photocopies provided are true copies of the original record.
42 CFR §2.33	A program may disclose those records in accordance with the consent.	14 NYCRR 510.9 Denial of access to records	<ul style="list-style-type: none"> a) When a request for access to records is denied, such denial shall be in writing. Such denial shall explain the reason for the denial, the right to appeal the decision and the process for appeal as provided in section 510.10 of this Part. b) A request for a record may be denied for any of the following reasons: <ul style="list-style-type: none"> 1) the record is exempted from disclosure by State or Federal law; 2) the record, if disclosed, would constitute an unwarranted invasion of personal privacy, under the provisions of Public Officers Law section 89(2) including, but not

			<p>limited to:</p> <ul style="list-style-type: none"> i. disclosure of employment, medical or credit histories, or personal references of applicants for employment; ii. disclosure of clinical records or information tending to identify recipients; iii. release of names and addresses if the list would be used for commercial or fund raising purposes; iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject of the record, and such information is not relevant to the work of the agency requesting or maintaining the record; or v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency; <p>3) disclosure of the record would impair present or imminent contract awards or collective bargaining negotiations;</p> <p>4) the record contains trade secrets, or has been submitted by a commercial enterprise or derived from information obtained from a commercial enterprise, and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;</p> <p>5) the record was compiled for law enforcement purposes and disclosure would:</p> <ul style="list-style-type: none"> i. interfere with law enforcement investigations or judicial proceedings; ii. deprive a person of his or her right to a fair trial or impartial adjudication; iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or iv. reveal non-routine criminal investigative techniques or procedures; <p>6) disclosure of the record would endanger the life or safety of any person;</p>
--	--	--	--

			<ul style="list-style-type: none"> 7) the record consists of interagency or intra-agency materials, which are not statistical or factual tabulations or data, instructions to staff that affect the public, final agency policy or determinations, or external audits, including but not limited to audits performed by the Comptroller and the Federal government; 8) the record consists of examination questions or answers which are requested prior to the final administration of such questions; 9) the record consists of computer access codes; or 10) the record consists of photographs, microphotographs, videotape or other recorded images prepared under authority of section 1111-a of the Vehicle and Traffic Law. <p>c) Disclosure of a record generally shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraph (b)(2) of this section when:</p> <ul style="list-style-type: none"> 1) identifying details are deleted; 2) the subject of the record provides written consent to disclosure; or 3) upon presenting reasonable proof of identity, a person seeks access to records pertaining to him or her. <p>d) Nothing in this Part shall require the disclosure of:</p> <ul style="list-style-type: none"> 1) the home address of a present or former officer or employee or a retiree of a public employee's retirement system, unless such disclosure is to recognized employee organizations as provided in section 89(7) of the Public Officer's Law; 2) the name or home address of a beneficiary of a public employee's retirement system, or an applicant for appointment to public employment; 3) records prohibited from disclosure pursuant to the Personal Privacy Protection Law (article 6-A of the Public Officers Law); or 4) records prohibited from disclosure pursuant to section 33.13 of the Mental Hygiene Law or any other provision of the
--	--	--	--

			State or Federal law.
	If state law permits minor to apply for services, and does not require parental consent, minor only consents for treatment and services.		
	If state law requires parental consent for treatment of a minor, consent must be given by both minor and parent.		
42 CFR §2.14(c)(2)(i)	If state law requires parental consent for treatment of a minor, application for services by minor can only be shared with parent with either written consent by minor.		
42 CFR §2.14(c)(2)(ii)	Program director decides minor lacks capacity to make rational choice regarding consent.		

Child Support

| Sharing Child Support Information with Other Systems

Our most vulnerable children, those in the child welfare system, need an extra hand to help them thrive in the face of difficult circumstances. Perhaps surprisingly to some, that extra helping hand can come from the child support community. When a new home, temporary or permanent, is needed for a child, one of the first places child welfare workers look is to other family members who might be able to care for the child. Child support can be a tremendous resource for locating the child's other parent, usually the father, whose contact information may not be available from the child's mother. If the child's family has a current or former welfare case, if the parents have been divorced, if paternity has been established or if the child is on Medicaid, the child support program probably has information about the child's other parent. It is worth the time and effort for child welfare and child support agencies to build relationships and develop procedures to make sure that, when appropriate, fathers and other paternal kin have the opportunity to take responsibility for their children in need.²⁷

Federal Child Support and the Establishment of Paternity law states that the system must have security and interface requirements in its management system. Included are specific references to improved information exchange with the following systems and services:

- State agency administering Medical Assistance (Title XIX).
- Education regarding persons who take loans under the Higher Education Act and are in default or owe an obligation to refund an overpayment of a grant.
- Department of Housing and Urban Development.
- Unemployment Compensation Program.
- Supplemental Nutrition Assistance Program (SNAP).
- Temporary Aid for Needy Families (TANF).

²⁷Vicki Turetsky, Commissioner, Office of Child Support Enforcement, Administration for Children and Families, U.S. Department of Health and Human Services, QIC News, National Quality Improvement Center on Non-Resident Fathers and the Child Welfare System, Quarterly Newsletter, Summer 2009, page 1.

- Foster care system regarding foster care maintenance.

At the same time, the Federal law states that, unless specifically stated by law, the personal information that the system collects is confidential and cannot be shared. One reason for this clear legislative mandate is the child support system's access to very sensitive information, including but not limited to data from the Internal Revenue Service (IRS) which has strict security requirements.

Subject to safeguards on privacy and information sharing, there can be access to records of other state and local government agencies by the child support system. The personal identifiable information is provided by other systems to the child support system, but the data exchange is not reciprocal. The information provided back from the child support system is not identifiable. It is important to note that the federal law clearly states that the child support system shall have access to records of other state and local government agencies, including vital statistics, tax and revenue records, real and titled personal property, occupational and professional licenses, ownership and control of corporations, partnerships, and other business entities, employment security records, public assistance programs, motor vehicle department, and corrections. The information is then information safeguarded and maintained solely by the child support system unless separately verified from other, less secure systems or methods.

Child support data sets include the National Director of New Hires (NDNH) located at the Social Security Administration's (SSA) National Computing Center (NCC) and information from the State Directory of New Hires (SDNH). The Office of Child Support Enforcement (OCSE) enters into Memorandums of Understanding (MOU)/Computer Matching Agreement (CMA) with each agency that receives NDNH information. This MOU/CMA specifies the purpose for sharing information, the legal authority, the permitted purposes, the information that will be compared, and the expected results of the match. The NDNH also contains information from the Multistate Financial Institution Data Match (MSFIDM) and the State Financial Institution Data Match (FIDM), both of which contains highly confidential, personal information.

In 2006 and 2007, the Federal Office of Child Support Enforcement, (OCSE) through the Center for Policy Research, brought together eight different local jurisdictions from eight different states, with representatives from the child support and child welfare systems, to come to agreement about jointly serving multiple-agency families. Participants were from California, Massachusetts, Minnesota, New Jersey, Oklahoma, Oregon, Tennessee, and Wisconsin, and ranged from the smallest local counties of approximately 400,000 (Hampden County, Massachusetts, Camden County, New Jersey, and Clackamas County, Oregon) to the largest, Los Angeles County, California. The meetings resulted in several of the represented jurisdictions leading the way on collaborations between two child-serving systems.

The Office of Child Support Enforcement issued an Information Memorandum (IM) dated August 1, 2012 (IM-12-02) that lays out information that the state child support agency can provide to the state child welfare agency to carry out its program responsibilities. This IM follows the revised child support enforcement regulations issued in 2010 regarding the State Parent Locator Service (SPLS) and the Federal Parent Locator Service

(FPLS) that permit state child support agencies to share certain information about parents and relatives of a child involved in a child welfare care with state child welfare agencies.

What Information to Share

Child support agencies receive information from the Internal Revenue Service (IRS). Because of the strict restrictions placed by the IRS on the provided information, it is of course simpler if the information provided by the IRS is already known or can be independently verified through a different agency or data source. Therefore, sharing child support information is possible and New York should be open to approaching this challenge to better serve children and families through the Child Health Passport and other initiatives, as needed.

For Child Health Passport, the Policy Subcommittee must first make a specific list of data needed and then determine whether the project requires information from the State's child support agency or whether the paternity and support information is already contained in the child's social work file.

Who Receives Shared Information

Individuals to be given access to the shared child support information are dependent on presenting permissible reasons for the information sharing process. Access must be based on job responsibilities or job classification and should be limited to only those persons who need to know this information in order to perform their job responsibilities and to further provide and improve services to the youth. It is again a task of the Policy Subcommittee to make these determinations.

How to Share Information

In Delaware, the Divisions of Family Services & Management Support Services of the Department of Services for Children, Youth and Their Families (DSCYF) (including child welfare) and the Division of Child Support Enforcement (DCSE) of the Department of Health and Social Services entered into a Memorandum of Agreement (MOA) to work together for the benefit and welfare of children and their families. This MOA cites and meets all applicable federal laws and regulations (IV-E and IV-D state plans) and the applicable Delaware state laws. The MOA specifically discusses the data interfaces between the two systems and the requirements and responsibilities of each agency related to the agreement.

The Appendix to this Toolkit contains a copy of this MOA and the MOA's attachment dealing with the data interchanges.

Since the sharing of child support information has a statutory basis, the issue of voluntary consent by the individual is not applicable. Nor would a state court order be a proper mechanism to obtain information from the child support enforcement agency if not permitted by Federal law.

To share, therefore, the Legal and Policy Subcommittees must create an MOU or MOA. Information Technology professionals from all involved agencies must be included in the

conversations. This collaboration and the ensuing document will ensure that the information shared is permitted by both federal and New York state laws, that the purpose for the sharing is appropriate, and that the information is safeguarded and maintained in a confidential manner once shared.

Child Support

Federal Law		New York State Law
Title IV-D of the Social Security Act Child Support & Establishment of Paternity, 42 USC §651 et seq. Chapter III-Office of Child Support Enforcement, 45 CFR §301 et seq.		Family Court Act FCA §166 Privacy of Records
Information Sharing with Child Welfare Agency		All Family Court Proceedings, Including Child Protection, Foster Care, Juvenile Justice, Child Support
653(c)(4); 653(j)(3); 654(8); 653(a)(2)(iv); 653(a)(2)(A); 653(a)(2)(A)(iii); 653(a)(2)(C)	To state agency administering Title IV-B or Title IV-E program (Child Welfare). To facilitate location of any individual who has or may have parental rights of the subject child, including information about custodial parent, noncustodial parent, putative father or child. Can provide: <ol style="list-style-type: none"> 1) Person's name, social security number, and address; employer's name, address, and employer ID number; 2) Wages, income, and benefits of employment, including health care coverage; and 3) Type, status, location, and amount of assets to, or debts owed by or to the individual. Limitations to provide: <ol style="list-style-type: none"> 1) No IRS information unless independently 	The records of any proceeding in the family court shall not be open to indiscriminate public inspection. However, the court in its discretion in any case may permit the inspection of any papers or records. Any duly authorized agency, association, society or institution to which a child is committed may cause an inspection of the record of investigation to be had and may in the discretion of the court obtain a copy of the whole or part of such record.

	<p>verified;</p> <p>2) No MSFIDM or state FIDM information; and</p> <p>3) Independent verification is required for any other information.</p>	
		Title 22 New York code, Rules and Regulations
		22 NYCRR 205.5 Privacy of Family court Records
<p>653(c)(4);</p> <p>653(j)(3);</p> <p>654(8);</p> <p>653(a)(2)(A)(iii)</p>	<p>To state agency administering Title IV-B or Title IV-E program (Child Welfare). To assist in carrying out responsibilities under Title IV-B and Title IV-E programs with respect to relatives of involved child.</p> <p>Can Provide:</p> <p>Person's name, social security number, address, employer's name and address, and employer ID number.</p> <p>Limitation to provide:</p> <ol style="list-style-type: none"> 1) No IRS information unless independently verified; 2) No MSFIDM or state FIDM information; and 3) Independent verification is required for any other information 	<p>The following shall be permitted access to the pleadings, legal papers formally filed in a proceeding, findings, decisions and orders and, subject to the provisions of CPLR 8002, transcribed minutes of any hearing held in the proceeding:</p> <ol style="list-style-type: none"> a) The petitioner, presentment agency and adult respondent in the Family Court proceeding and their attorneys; b) When a child is either a party to, or the child's custody may be affected by, the proceeding: <ol style="list-style-type: none"> i) Parents or persons legally responsible for the care of that child and their attorneys; ii) Guardian, guardian ad litem and attorney for that child; iii) Authorized representative of the child protective agency involved in the proceeding or the probation service; iv) Agency granted custody by Family Court; v) Authorized employee or volunteer of a court appointed special advocate program appointed by the Family Court to assist in the child's case in accordance with Part 44 of this Title; and c) Representative of the State Commission on Judicial Conduct, upon application to the appropriate Deputy Chief Administrator, or his or her designee, containing an affirmation that the commission is inquiring into a complaint under article 2-A of the Judiciary Law, and that the inquiry is subject to the confidentiality provisions of said article; d) In proceedings under articles 4, 5, 6 and 8 of the Family Court Act in which temporary or final orders of protection have been issued: <ol style="list-style-type: none"> i) Where a related criminal action may, but has not yet been commenced, a prosecutor upon affirmation that such records are necessary to conduct an investigation of prosecution; and ii) Where a related criminal action has been commenced, a prosecutor or defense attorney in accordance with procedures set forth in the Criminal Procedure Law provided, however, that prosecutors may request transcripts of Family Court proceedings in accordance with section 815 of the Family Court Act, and provided further that any records or information disclosed pursuant to this subdivision must be retained as confidential and

		<p>may not be redisclosed except as necessary for such investigation or use in the criminal action; and</p> <p>e) Another court when necessary for a pending proceeding involving one or more parties or children who are or were the parties in, or subjects of, a proceeding in the Family Court pursuant to article 4, 5, 6, 8 or 10 of the Family Court Act. Only certified copies of pleadings and orders in, as well as information regarding the status of, such Family Court proceeding may be transmitted without court order pursuant to this section. Any information or records disclosed pursuant to this subdivision may not be redisclosed except as necessary to the pending proceeding.</p> <p>Where the Family Court has authorized that the address of a party or child be kept confidential in accordance with Family Court Act, section 154-b(2), any record or document disclosed pursuant to this section shall have such address redacted or otherwise safeguarded.</p>
653(j)(3)	<p>To state agency administering Title IV-B or Title IV-E program (Child Welfare). To assist state to carry out its responsibilities under Title IV-B and Title IV-E programs.</p> <ol style="list-style-type: none"> 1) Can provide information from National Directory of New Hires (NDNH):Employee's name, social security number, address, and wage amount (calendar quarter in which wages were paid); 2) Employer's name, address, Federal Employer Identification Number, and date of hire; and 3) From the Unemployment Insurance File, claimant's name, social security number, address, benefit amount (gross amount, before any deductions), and reporting period (calendar quarter when claim was filed). 	
Chapter III-Office of Child Support Enforcement, 45 CFR §301 et seq		
302.35(d)(2)	Parent Locator Service information may be disclosed to	

	State Title IV-E agencies to assist in carrying out responsibilities.	
303.21(d)	Authorized disclosures of confidential information to state agencies to assist in carrying out responsibilities under title IV (Child Welfare).	
303.70(a)	Support agency will have procedures for locating parents, putative fathers, or children for purpose of establishing parentage or for assisting state agencies to carry out Title IV-E responsibilities.	
305.1	“Current Assistance Collections” are those received and distributed for individuals whose rights to support are required to be assigned to state under Title IV-E.	
305.63(c)	Standards for determining substantial compliance for state’s support program include services for persons receiving IV-E benefits.	
307.13(a)(3)	Security and confidentiality of electronic systems permit disclosure of information to state agencies administering title IV (Foster Care Maintenance).	
307.13(a)(4)(iv)	Disclosures of NDNH and FCR information to Foster Care Maintenance assistance programs are allowed.	
Information Sharing with TANF		
Child Support & Establishment of Paternity-42 USC §651 et seq		
653(j)(3); 652(f)	<p>To state agency administering TANF program under Title IV-A. To assist states in carrying out responsibilities under TANF-funded programs.</p> <p>Information from NDNH:</p> <ol style="list-style-type: none"> 1) Employee’s name, social security number, address, and wage amount (calendar quarter in which wages were paid); 2) Employer’s name, address, Federal Employer Identification Number; and date of hire; and 3) From the Unemployment Insurance File, claimant’s 	

	name, social security number, address, benefit amount (gross amount, before any deductions), and reporting period (calendar quarter when claim was filed).	
Chapter III-Office of Child Support Enforcement, 45 CFR §301 et seq		
302.35(d)(2)	Parent Locator Service information may be disclosed to state TANF agency to assist agencies in carrying out responsibilities.	
303.21(d)	Authorized disclosures of confidential information to state agencies to assist in carrying out responsibilities under title IV (TANF).	
303.70(a)	Support agency will have procedures for locating parents, putative fathers, or children for purpose of establishing parentage or for assisting state agencies to carry out TANF responsibilities.	
305.1	“Current Assistance Collections” are those received and distributed for individuals whose rights to support are required to be assigned to state under TANF.	
305.63(c)	Standards for determining substantial compliance for state’s support program include services for persons receiving TANF.	
307.10(b)(9) & (10)	Electronic systems must accept case referrals and update individual case information from TANF.	
307.11(f)	Information exchange may permit comparisons and other disclosures of information with TANF agencies, both within and outside of the state.	
307.13(a)(3)	Security and confidentiality of electronic systems permit disclosure of information to state agencies administering Title IV (TANF).	
307.13(a)(4)(iv)	Disclosures of NDNH and FCR information to TANF, programs are allowed.	
Information Sharing with Medicaid		
Child Support & Establishment of Paternity-42 USC §651 et seq		

652(f); 654(4)	<p>To state agency administering the Medicaid programs under Title XIX. To assist states carrying out their responsibilities under programs funded under Medicaid programs.</p> <p>HHS shall issue regulations requiring state support enforcement programs:</p> <ol style="list-style-type: none"> 1. To petition for enforcement of medical support as part of child support order; 2. Improve information exchange between state support and Medicaid programs; and 3. Provide information to programs regarding availability of health insurance coverage. 	
Chapter III-Office of Child Support Enforcement, 45 CFR §301 et seq		
302.80	Through cooperative agreement with state Medicaid agency, medical support enforcement information can be shared.	
303.21(d)	Authorized disclosures of confidential information to state agencies to assist in carrying out responsibilities under Title XIX (Medicaid).	
303.30	If TANF or IV-E agency does not provide particular individual identifying information to Medicaid agency and that information is available to the support agency, then support agency shall obtain and then provide information to Medicaid.	
303.31	Support agency shall periodically communicate with Medicaid agency to determine lapses in health insurance coverage.	
304.20(b)(ix)(B)	State support must establish agreement with Medicaid agency to report on timely basis information necessary for the determination and redetermination of Medicaid eligibility.	
305.1	“Current Assistance Collections” are those received and distributed for individuals whose rights to	

	support are required to be assigned to state Medicaid program.	
305.63(c)	Standards for determining substantial compliance for state's support program include services for persons receiving Medicaid assistance.	
307.10(b)(13)	Electronic systems must accept case referrals and update individual case information from Medicaid.	
307.11(f)	Information exchange may permit comparisons and other disclosures of information with Medicaid agencies, both within and outside of the state.	
307.13(a)(3)	Security and confidentiality of electronic systems permit disclosure of information to state agencies administering Medicaid.	
Information Sharing with SNAP		
Child Support & Establishment of Paternity-42 USC §651 et seq.		
663(j)(10)	<p>To state agency administering Supplemental Nutrition Assistance Program (SNAP) program. For purpose of administering a SNAP program.</p> <p>Information from NDNH:</p> <ol style="list-style-type: none"> 1) Employee's name, social security number, address, and wage amount (calendar quarter in which wages were paid); 2) Employer's name, address, Federal Employer Identification Number; and date of hire; 3) From the Unemployment Insurance (UI) File, claimant's name, social security number, address, benefit amount (gross amount, before any deductions), and reporting period (calendar quarter when UI claim was filed). 	
Chapter III-Office of Child Support Enforcement, 45 CFR §301 et seq		
303.21(d)	Authorized disclosures of confidential information to state agencies to assist in carrying out	

	responsibilities under SNAP.	
307.13(a)(3)	Security and confidentiality of electronic systems permit disclosure of information to state agencies administering SNAP.	
Information sharing with Unemployment Compensation		
Child Support & Enforcement of Paternity-42 USC §651 et seq.		
453(j)(8)	<p>To state Workforce Agencies. For purpose of administering unemployment compensation program under Federal or state law.</p> <p>Information from NDNH:</p> <ol style="list-style-type: none"> 1) Employee's name, social security number, address, and wage amount (calendar quarter in which wages were paid); 2) Employer's name, address, Federal Employer Identification Number; and date of hire; 3) From the Unemployment Insurance (UI) File, claimant's name, social security number, address, benefit amount (gross amount, before any deductions), and reporting period (calendar quarter when UI claim was filed). 	
Chapter III-Office of Child Support Enforcement, 45 CFR §301 et seq		
302.65	Through cooperative agreement with state agency, information is shared regarding individuals owing support obligations to determine whether individuals have applied for or are receiving unemployment compensation.	
General Provisions		
Child Support & Establishment of Paternity-42 USC §651 et seq.		NY Social Services Law §111-v Child Support - Confidentiality, Integrity, and Security of Information
653(b)(2)	No information from the Federal Parent Locator Service (FPLS) can	<ol style="list-style-type: none"> 3. The department, in consultation with appropriate agencies including but not limited to the New York

	<p>be disclosed if such disclosure would:</p> <ol style="list-style-type: none"> 1. Contravene U.S. policy or security interests or census data confidentiality; or 2. In the presence of reasonable evidence of domestic violence or child abuse, present potential harm to custodial parent or child. 	<p>State Office for the Prevention of Domestic Violence, shall by regulation prescribe and implement safeguards on the confidentiality, integrity, accuracy, access, and the use of all confidential information and other data handled or maintained, including such information and data maintained in the automated child support enforcement system. Such data shall be maintained in a confidential manner designed to protect the privacy rights of the parties and shall not be disclosed except for the purpose of, and to the extent necessary to, establish paternity, or establish, modify or enforce an order of support.</p> <ol style="list-style-type: none"> 4. These safeguards shall include provisions for: <ol style="list-style-type: none"> a. Policies restricting access to and sharing of information and data, including: <ol style="list-style-type: none"> i. safeguards against unauthorized use or disclosure of information relating to procedures or actions to establish paternity or to establish or enforce support; ii. prohibitions against the release of information on the whereabouts of one party to another party against whom an order of protection with respect to the former party has been entered; and iii. prohibitions against release of information on the whereabouts of one party to another party if the department has reason to believe that release of information may result in physical or emotional harm to the former party. b. Systems controls to ensure strict adherence to policies. c. Monitoring of access to and use of automated system to prevent unauthorized access or use. d. Training in security procedures for all staff with access and provisions of information regarding these requirements and penalties. e. Administrative penalties for unauthorized access, disclosure, or use of confidential data. 5. If any person discloses confidential information in violation of this section, any individual who incurs damages due to the disclosure may recover such damages in a civil action. 6. Any person who willfully releases or permits the release of confidential information obtained pursuant to this title to persons or agencies not authorized to receive it shall be guilty of a class A misdemeanor.
--	---	---

		7. Safeguards established here shall apply to staff of the department, local social services districts, and contractors.
654(26)	State shall have confidential information safeguards in effect to protect privacy rights, including protective orders whose breach may result in physical or emotional harm, domestic violence, or child abuse.	
653(c)(3); 653(a)(2)(B); 653(a)(2)(C)	<p>To a resident parent, legal guardian, attorney or agent of a child NOT receiving TANF benefits. To obtain information regarding the noncustodial parent and/or putative father. Can provide:</p> <ol style="list-style-type: none"> 1. Person's name, social security number, and address; employer's name, address, and employer ID number; 2. Wages, income, and benefits of employment, including health care coverage; and 3. Type, status, location, and amount of assets of, or debts owed by or to the individual. <p>Limitations to provide:</p> <ol style="list-style-type: none"> 1. No IRS information; 2. No MSFIDM or state FIDM information; and 3. Independent verification is required for any other information. 	
Chapter III-Office of Child Support Enforcement, 45 CFR §301 et seq		
302.35(c)(3)	Information shall be treated as confidential unless resident parent not receiving TANF assistance attests that request is being made solely to obtain information to establish parentage or establish, set the amount of, modify, or enforce child support obligations.	
302.60	Through a cooperative agreement with the IRS, support agency has procedures to collect past-due	

	support from Federal tax refunds.	
303.70(c)(3)	Support agency will safeguard and treat as confidential all information obtained through federal Parent Location Service.	

Juvenile Justice

| Sharing Juvenile Justice Information with Other Systems

The predominant Federal law in the area of juvenile justice is the Juvenile Justice and Delinquency Prevention Act.²⁸ This law created Department of Justice bureaus, institutes and offices to address, in a centralized manner, the complicated juvenile crime problem and to assist states and localities in interventions and services that best meet the problems of the offenders and, at the same time, provide community safety and protection. Because of and in recognition of the complicated nature of juvenile crime and the need for an integrated approach to prevent and treat juvenile delinquency, the law also created the Federal Government's Coordinating Council on Juvenile Justice and Delinquency Prevention composed of the Attorney General, the Secretaries of Health and Human Services, Labor, Education, Housing and Urban Development, and other officers of federal agencies as the President may designate.

The Juvenile Justice and Delinquency Prevention Act also provides the ability to issue grants and contracts to states and local governments. In order to receive such a grant or contract, a state must submit to a plan for carrying out its purposes over a three-year period, with annual updates to the state plan. One such example of a grant was the Office of Juvenile Justice and Delinquency Prevention (OJJDP) request for applications issued on May 24, 2013, to deliver training, technical assistance, and implementation support for information sharing among juvenile justice, child welfare, mental health, education, and other youth serving agencies. This request recognized that no system alone has all the critical information to serve a youth in the most efficient and effective manner. It further recognized such information sharing faces challenges, including respecting laws and other provisions protecting the privacy and confidentiality, as well as other rights, of the youths and their families.

There are obviously special rules and considerations regarding information sharing between governmental entities individuals involved in the juvenile justice system, especially when the proceedings are pre-adjudication. Such considerations may be voided once a youth is adjudicated delinquency and the court is deciding the disposition.

Federal regulations require that any identifiable information sharing of youth must protect the privacy of individuals by limiting the information to the purposes of the research, statistical program, or MOU between governmental entities. Specifically, the regulations require that the sharing of such information must be done on a need-to-know basis and shared with prior consent or by court order.

There are a number of information-sharing relationships, models, and toolkits regarding the information sharing involving the juvenile justice system. The federal Office of Juvenile Justice and Delinquency Prevention provide several references to juvenile delinquency prevention information sharing.

In 2008, the state executive directors of five departments, the commissioner of education, and the state court administrator, signed an MOU to implement the National Juvenile Information Sharing Initiative's Guidelines for Juvenile Information Sharing and the formation of the Colorado Children

²⁸ 42 U.S.C. §5601 *et. seq*

and Youth Information Sharing Collaborative²⁹ (CCYIS). This Collaborative provides cross-system protocols and technical solutions for information sharing between child welfare and juvenile justice, behavioral health, public health, delinquency prevention, education and youth corrections, youth representatives, family advocates, family and youth driven organizations, and county coordinators.

The John D. and Catherine T. MacArthur Foundation supported a “Models for Change” tool kit regarding juvenile justice information sharing. Authored by the Child Welfare League of America and the Juvenile Law Center, the tool kit shares tips for information sharing for the purposes of individual case planning and decision-making, law, policy and program development, and program evaluation and performance measurement.

For New York, information sharing by the juvenile justice system and other child-serving systems is governed by several laws. Under the New York Executive Law, records or files kept by the division of youth are confidential. Such information can be shared by court order. This is the same situation under the New York Family Court Act, except that once disposition is made and a juvenile delinquent is placed, the receiving entity shall receive copies of all orders, reports and relevant records in the possession of the court and probation department, including but not limited to diagnostic, educational, medical, psychological, and psychiatric records.

What Information to Share

The types of information and different systems that information from the juvenile justice system can be shared are myriad.

New York OCFS was a pioneer in reaching an agreement with its Medicaid partner to share health information for youth detained in state operated facilities.

Other possibilities include sharing information with the:

- Education system to determine if delinquent youth show a pattern of truancy and at what grade to determine when intervention services would be most effective in preventing future delinquency.
- Education system for a youth who is placed in a state delinquency facility or a youth who is being discharged from a delinquency facility and returning to the home school.
- Medicaid system or the behavioral health system so that needless evaluations and treatments can be avoided and to ensure continuity of services for the youth both from the community to placement and from placement to the community.

²⁹<http://www.colorado.gov/cs/Satellite/PLC/PLC/1251574219363>

How to Share Information.

All of the situations described above, including the New York OCFS and Medicaid information sharing arrangement, can be arranged through an MOU which clearly states what information will be shared, why such information needs to be shared to further the public interest, when the information will be shared, how the information will be shared, and how the information will be maintained so that further release will not occur. In addition, a properly worded release signed at the time of intake (e.g., upon a judge ordering a youth to the state's custody, the parent or probation officer can agree to share the Medicaid information for that youth) can support the sharing of information. Last, when dealing with juvenile justice and child welfare, a court is involved and, if necessary, a court order may be issued ordering the sharing of the necessary information to ensure appropriate care, treatment, and services.

Who Receives Shared Information

Using a “need to know” test, the Policy Committee should determine the categories of staff persons who require access to the information. Through appropriate electronic security, only those persons who need to access the information in order to efficiently fulfill their responsibilities should be granted access.

Juvenile Justice

Federal Law	New York State Law	
Juvenile Justice and Delinquency Prevention Act 42 U.S.C. §5601 et. seq	Article 19-G New York Executive Law	
This is a grant funding statute and does not address issues of confidentiality and/or information sharing restrictions.	§501-c	<ol style="list-style-type: none">(a) Records or files of youths kept by division for youth are confidential and shall be safeguarded from inspection or examination by any person other than one authorized to receive such knowledge or to make such examination by:<ol style="list-style-type: none">(i.) The division pursuant to its regulations(ii.) A judge of the court of claims when records are required for the trial of a claim or other court proceeding(iii.) A federal court judge or magistrate, a justice of supreme court, a judge of the county court or family court, or a grand jury when the records are required for a trial or proceeding. No person shall divulge the information without authorization by the division or by justice, judge or grand jury.(b) Information shall not be released which would identify a youth as having been in the custody of the division, except as provided in paragraph (a) of this subdivision.(c) Nothing shall limit an agency's responsibility or authority to report suspected child abuse or maltreatment

		<p>(d) Nothing shall prevent parent or legal guardian's access to records where access is authorized by law.</p> <p>2. Case records produced and maintained by the division shall be made available to a probation department, upon written request, for an investigation. Any written requests for records shall be accompanied by a copy of the court order and shall request only a copy of the youth's official case record. The division has a minimum of ten days to produce the records. The division is required to forward only records less than three years old relating to a youth less than twenty-one years of age at the time of the request. The division may charge a photocopying fee to the probation department. A probation department shall retain copies of records under the same conditions of confidentiality that apply to the investigation.</p>
	§523-n	<p>Reports of the office of ombudsman and independent review board are confidential and shall be safeguarded from any person other than commissioner, other designated agency officials, and independent review board. Authorized persons receiving reports shall not divulge information without the Commissioner's written consent. Authorized disclosure shall not contain individually identifiable information.</p>
	New York Family Court Act	
	§166	<p>Records of any family court proceedings are not open to indiscriminate public inspection. However, the court in its discretion in any case may permit the inspection or sharing of any papers or records by any authorized agency, association, society or institution to which a child is committed.</p>
	§381.1	<p>Whenever a juvenile delinquent is placed with a suitable institution, the family court shall transmit a copy of family court orders, probation report, and all other relevant evaluative records in possession of family court and probation department, including but not limited to diagnostic, educational, medical, psychological, and psychiatric records.</p>
	Title 22, New York Code, Rules and Regulations	
	22 NYCRR 205.5	<p>The following shall be permitted access to pleadings, formally filed legal papers, findings, decisions and orders, and transcribed minutes of any hearing held in the proceeding:</p>
	Privacy of family court records	<p>(a) Petitioner, presentment agency and adult respondent in the Family Court proceeding and their attorneys;</p> <p>(b) When a child is either a party to, or the child's custody may be affected by, the proceeding:</p> <ol style="list-style-type: none"> (1) Parents or persons legally responsible for care of child and their attorneys; (2) Guardian, guardian ad litem and attorney for child; (3) Authorized representative of involved child protective agency or probation service; (4) Any agency and agency attorney that is granted custody by Family Court; (5) Authorized employee or volunteer of court appointed special advocate program; <p>(c) Representative of the State Commission on Judicial Conduct, upon application to the appropriate Deputy Chief Administrator,</p>

		<p>affirming that the commission is inquiring into a complaint, and that the inquiry is subject to confidentiality provisions;</p> <p>(d) When temporary or final orders of protection have been issued:</p> <ol style="list-style-type: none"> (1) Prior to start of a related criminal action, when records are necessary to an investigation of prosecution; and (2) Where a related criminal action has begun, a prosecutor or defense attorney may request transcripts of Family Court proceedings provided that any information disclosed be retained as confidential and not redisclosed except as necessary for such investigation or use in the criminal action; and <p>(e) Another court when necessary for a pending proceeding involving one or more parties or children who are parties in, or subjects of, a proceeding in Family Court.. Only certified copies of pleadings and orders or information regarding status of proceeding may be transmitted without court order. Any information disclosed may not be redisclosed.</p> <p>Where Family Court has authorized that the address of a party or child be kept confidential, any record or document disclosed shall have such address redacted or otherwise safeguarded.</p>
--	--	---

Other Programs

Sharing TANF, SNAP, SSI, Child Day Care, and Violence Against Woman Information with Other Systems

While many of the laws that relate to health and human services have been covered in the previous chapters, in this discussion of the interplay of protecting confidentiality and privacy rights with appropriate data sharing, there are additional, important laws and programs that impact the lives of New York State's clients. When creating an integrated information sharing health and human service systems at the state or local level, such as the Child Health Passport project, New York must consider the following laws and programs:

Temporary Aid for Needy Families (TANF)

When the Federal government moved from the Aid to Families with Dependent Children (AFDC) program to the Temporary Aid for Needy Families (TANF), cash assistance entitlements ended and became a block grant to states, mandating that adult recipients move from welfare to work within time limits. Regarding the sharing of information between governmental agencies, TANF is an essential partner with other systems including but not limited to child support enforcement, the Food Stamp Program, employment assistance, child protective services, Medicaid, and Unemployment Compensation. By sharing information about individuals' histories and experience between TANF and other systems, the State can measure its own success while improving services to children and families.

A key provision of TANF is state flexibility. States are independent of Federal control and direction as to the operation of TANF except in the areas specifically mentioned in Federal statute. For example, the statute prescribes the requirement for work participation and with maximum time for assistance. The statute does not address information sharing by TANF with other state systems. Thus, the information that New York's TANF program collects, how it conducts its operations and program, and how it shares information with other Federally-funded and assisted state programs is not specifically discussed in Federal law and is determined by the state (under the general requirements of the The Privacy Act of 1974). TANF programs may, however, receive information from other systems that have their own confidentiality requirements and such requirements must be met regarding the specific data.

Under TANF, there is the mandate to reach out to and share information with other systems. The law specifically discusses the TANF system developing relationships and information sharing processes with domestic violence programs, child support, law enforcement, Medicaid, Social Security, child care, and foster care maintenance. At the same time, states must take reasonable steps to restrict the use and disclosure of information about individuals and families applying for and/or receiving TANF benefits.

A recent United States Governmental Accountability Office (GAO) report recommends increased data sharing with child welfare programs to improve access to benefits and services. Relative caregivers were of specific concern in the findings, recommending coordination efforts including collocating TANF and child welfare services and having staff from each agency collaborate to help relative caregivers' access services. The GAO reports that, although it would be beneficial, information and data sharing between TANF and child welfare does not occur consistently, hindering access to available benefits. Half of the states reported obstacles to sharing data including but not limited to confidentiality and privacy concerns.³⁰

From the standpoint of Federal barriers or prohibitions to information sharing of individual information, TANF is capable of collaborating with other state programs to determine the information to be shared, the legitimate governmental purpose for sharing, with whom and when to share the information, and the mechanism for protecting the information once shared.

In Rockland County, New York, a group of mothers who are heading low-income households at risk for or involved with the child welfare system participate in an integrated program of TANF and child welfare services called Next Steps. Next Steps is a six-month weekday program that helps the mothers develop and accomplish individualized goals in employment readiness, academics, computer skills, counseling and therapy, and parenting. Funded through a Federal ACF grant, child welfare services address child safety issues, father involvement, family stability, and self-sufficiency. Mentoring is provided by volunteers, many of whom are county DSS workers who serve as information resources for their mentees.

Key components of the TANF law regarding information sharing include:

- Designing TANF to reach out to and work in partnership with other state systems, including but not limited to education, domestic violence and rape programs, child abuse and neglect, and teenage pregnancy prevention programs.
- Aligning closely with the state's system that establishes paternity and child support systems as a condition for individuals to be eligible to receive TANF benefits (with certain exceptions).
- Collaborating with the state's Medicaid system.

³⁰ GAO, *TANF and Child Welfare Programs: Increased Data Sharing Could Improve Access to Benefits and Services*, GAO-12-2 (Washington, D. C. : Oct. 7, 2011)

- Providing information to Federal, state, or local law enforcement upon written request and, if available, specific information of a possible TANF recipient being a fugitive felon or probation or parole violator, to perform the official duties in locating or apprehending an individual.
- Creating and maintaining individual responsibility plans and requiring recipients to perform appropriate functions, including but not limited to insuring that school-age children attend school, maintain certain grades and attendance, immunizations, attending parenting and money management classes, employment related activities, and/or undergo appropriate substance abuse treatment.
- Providing quarterly disaggregated reports on families receiving TANF and SSI benefits.
- Providing quarterly disaggregated reports on families receiving TANF and subsidized housing, Medicaid, SNAP, or subsidized child care.
- Taking reasonable steps to restrict the use and disclosure of information about individuals and families receiving TANF benefits

The statutory framework presents a balance of protecting the information provided to the TANF program while at the same time providing an efficient, effective, and coordinated process yielding the maximum benefits to individuals. States must make decisions, based on their own laws regarding when, why, with whom, and how to share TANF information with other Federally-funded and assisted systems. Many states link data and information sharing within TANF, Food Stamp Program, and Medicaid, and also link TANF data to job opportunities, child care and basic skills, unemployment insurance benefits, and child support enforcement.

How to Share Information

For successful implementation of data sharing, the New York State agency heads of the State systems must enter into an MOU as to information to be shared, with whom, and by what method. Such an MOU is drafted and included in the appendix in consideration of and respecting the New York's particular laws regarding the subject matters.

The policy and practice experts determine the minimally necessary information to exchange to facilitate the legitimate governmental purpose requiring the data sharing. After the group agrees on the limited data set, the next task is to determine who has access to the information, reviewing job classifications and job functions and whether the person receives particular information or all of the shared information. When dealing with TANF, this information should be easier than other areas since the information collected by TANF is the same and/or similar to information collected by or needed by other systems, especially when looking at eligibility data, unless the data was received by the TANF by another system with its own controls over sharing of information.

The first task for the Legal Subcommittee to decide is whether New York state law and the general requirements of The Privacy Act of 1974 protects TANF information (and specific data received by TANF with its own stricter confidentiality requirements) from being shared with other governmental systems. This Subcommittee must accumulate specific and general New York State privacy laws to determine if there state requirements that must be met to share case information between systems working with the same person. The group must examine each state law to

determine whether or not it encourages information sharing to improve outcomes for this population and any additional specific requirements. For each of the requirements, the legal group must provide suggested vehicles for sharing the information and meeting the requirements.

Under Title IV-A, the recipient does not have to sign a written consent, or a court order/subpoena, or a state statute for information to be shared. In fairness and in the spirit of full disclosure, however, the TANF application process should make clear that the information provided by the individual may be shared with other governmental benefits systems and should include with which systems the information may be shared, giving the recipient an opportunity to object and to have his or her objections heard administratively and considered.

Supplemental Nutrition Assistance Program (SNAP)

Referred to as the Food Stamp law or as SNAP, the Supplemental Nutrition Assistance Program Federal law safeguards the personal identifiable information provided by applicants for and recipients of SNAP benefits. It does not, however, present any undue barriers to information sharing with other state human services systems and specifically gives an exception to the safeguards with Federal assistance programs and Federally-assisted state programs. The Federal regulations further clarify that the Federally-assisted state programs must provide assistance to low-income individuals on a means-tested basis, making SNAP an important partner in the state's information sharing initiatives. Obviously, if a person is hungry, they cannot benefit from any other services. Food and nutrition is essential to all services.

By law, there is a close working relationship between SNAP and the Child Support Enforcement agency because a custodial parent of a minor child is required to cooperate with all paternity and support matters to receive SNAP benefits, and a non-custodial parent is required to cooperate with the child support enforcement state agency to receive SNAP benefits. The law specifically states that information obtained by SNAP agencies can be provided to persons directly connected with programs which are required to participate in the state income and eligibility verification system (IEVS) to the extent that the food stamp information is useful in establishing or verifying eligibility or benefit amounts under these other programs.

Another state's child welfare wanted its Statewide Automated Child Welfare Information System (SACWIS) to access the Food Stamp Program file information. The Food Stamp program made clear that its regulations permit disclosure of file information to "Federally-assisted state programs providing assistance on a means-tested basis to low income individuals." The Food Stamps Program determined that the state SACWIS/Child Welfare Programs qualify as "Federally- assisted programs" and therefore disclosure of Food Stamps Program file information to SACWIS/Child Welfare staff is permitted. The information obtained may not be further disclosed to any other individual or agency that is not directly associated with the administration of the Child Welfare Programs.

Even if information from SNAP is permitted to be shared with other Federal assistance programs and Federally-assisted, means-tested programs for low-incomes individuals and families, notice must

be given to food stamp applicants that information may be provided and to other human and health service systems and its use by those health and human service systems.

Key components of the SNAP law and Federal regulations regarding information sharing include:

- State SNAP agency must execute data exchange agreement with other agencies, specifying information to be exchanged and procedures used for the exchange.
- Privacy statement required for all SNAP applications and re-certifications that information will be verified through computer matching programs and that information may be disclosed to other Federal and state agencies.
- Privacy statement also must contain statement that the collection of information, including Social Security Number, of each household member is authorized by law and information will be used to determine eligibility through computer matching programs.
- As a condition to receive SNAP benefits, both custodial parent and non-custodial parent must cooperate with the child support enforcement agency.
- Allows for SNAP to obtain current support information directly from state agency in lieu of obtaining information from household.
- Exception to safeguards to prohibit use or disclosure of information to persons directly connected with administration of SNAP, Federal Assistance Programs, or Federally-assisted programs.
- State SNAP agencies must provide information to Child Support and SSI programs
- Use or disclosure of information obtained from food stamp program includes persons directly connected with the administration or enforcement of the programs which are required to participate in the state income and eligibility verification system (IEVS) to the extent the food stamp information is useful in establishing or verifying eligibility or benefit amount under those programs.
- SNAP state agencies may exchange with state agencies administering other programs IEVS information about food stamp households' circumstances which may be of use in establishing or verifying eligibility or benefits amounts under Food Stamps Program and those programs.
- SNAP agencies may exchange IEVS information with these agencies in other states when determined that same objectives are to be met and these programs are TANF, Food Stamps, Medicaid, Unemployment Compensation, and any state program administered under Titles I, X, XIV (adult categories), or VVI (SSI) of the Social Security Act.
- SNAP State agencies verify Social Security Numbers by submitting to SSA for verification.

The SNAP Federal statutory framework presents a balance between protecting the confidentiality of the information provided to the SNAP for eligibility or recertification purposes with the ability to

provide the information to other Federal Assistance Programs and Federally-assisted programs for low-income persons.

As part of the state's Independent Living Program and transition planning for youth in foster care approaching adulthood, the state child welfare system desired to provide as much benefits information as possible during the development of each youth's personal transition plan. The state child welfare agency developed an MOU with the state SNAP program to provide an automated application kiosk in its Independent Living Division (ILD). Along with the state's TANF and Medicaid systems, this kiosk permits the youth's ILD social worker to assist the transitioning young adult to determine eligibility for food stamps, cash assistance, and public medical insurance benefits. By directly entering the youth's unique identifying number, the required eligibility information is electronically shared with these other Federal Assistance Programs and state Federally-assisted programs without having to reenter any information.

How to Share Information

Both SNAP and the Federal regulations implementing the law provide that the state agencies with which SNAP can share information obtained from food stamp applicant or recipient households must be other Federal assistance programs or Federally-assisted state programs, providing assistance on a means-tested basis to low income individuals, or general assistance programs. The law and regulations discuss the requirement that the state agencies must execute a data exchange agreement and such an agreement must specify the information to be exchanged and the procedures which will be used to exchange such information. Therefore, as a first step, the agency heads must agree that the process will lead to an executed MOU including information to be shared, with whom, and by what method. The MOU should also clearly state the legitimate governmental interest for the information sharing process and the recognition and support to balance such interest with the interests of confidentiality and privacy. To accomplish these goals resulting in an MOU, the agency leaders must utilize the formed Legal and Policy Subcommittees to determine the information to be shared and by whom,

As part of the state's Independent Living Program and transition planning for youth in foster care approaching adulthood, the state child welfare system desired to provide as much benefits information as possible during the development of each youth's personal transition plan. The state child welfare agency developed an MOU with the state SNAP program to provide an automated application "kiosk" in its Independent Living Division (ILD). Along with the state's TANF and Medicaid systems, this "kiosk" permits the youth's ILD social worker to assist the transitioning young adult to determine the food stamps, cash assistance, and public medical insurance benefits the youth is eligible to receive by directly entering the youth's unique identifying number and the required eligibility information is electronically shared with the these other Federal Assistance programs and

state Federally-assisted programs without having to reenter any information.

The Legal Subcommittee has many purposes to fulfill and tasks to accomplish to assist the New York State agencies in its information sharing efforts. Under SNAP, the Legal Subcommittee must confirm that the partner agencies are permitted to receive SNAP data as a Federal Assistance program, a Federally-assisted state program, providing assistance on a means-tested basis to low income individuals, or a general assistance program. Then taking the product of the Policy Subcommittee, the Legal Subcommittee will draft the required MOU between the agencies as to specific information to be shared. As part of the Legal Subcommittee, the information technology experts from the partner agencies must work to determine the procedures used to exchange and protect information in order to accomplish the legitimate governmental purpose.

As part of this Subcommittee's responsibilities, the agency's legal experts must review any New York State laws that apply to information obtained by the SNAP program and the other agencies, as well as state-specific privacy and confidentiality laws, to determine whether there are additional requirements that must be met to share case information between the partner systems. For each of the additional state law requirements, the Legal Subcommittee must provide suggested vehicles for sharing the information and meeting the requirements. Such additional requirements may call for further work by the Policy Subcommittee and the IT experts.

As part of its responsibilities, the Legal Subcommittee will review the required privacy statement, for all SNAP applications and re-certifications, that information will be verified through computer matching programs and that information provided by the households may be disclosed to other Federal and state agencies. To take additional steps to give notice to SNAP applicants, the Privacy Statement may be amended to specifically notify the applicant that SNAP shared individual household information with particular other state agencies and that such information sharing is permitted by both Federal and state laws.

Supplemental Security Income

The law regarding the Supplemental Security Income (SSI) program states that it may enter into agreements for making determinations or providing information or assistance in making determinations, with state and local public and private agencies and organizations. The law discusses the relationship between SSI and Title IV-A of the Social Security Act (TANF) and Title IV-E of the Social Security Act (Foster Care Maintenance). It also states that Social Security will provide information obtained pursuant to such agreements to any Federal or Federally-assisted cash (TANF), food (SNAP), or Medical Assistance program (Title XIX) for eligibility and other administrative purposes as well as social services programs (Title XX). The law also discusses the relationship between Social Security and law enforcement. In New York State, the General Social Services law would also apply as it relates to confidentiality.

How to Share Information

An MOU must be drafted between the New York State agency that administers the SSI program and DCFS, or the TANF agency, the SNAP agency, or the State's Medicaid agency. What information should be shared should deal with common eligibility data and for other data necessary for other administrative purposes. The Program Group should limit the information that needs to

be shared to the “minimally necessary” amount and should determine, based on employment categories, who has access to the information.

Child Care and Development Block Grant (Child Day Care)

For the past 20 years, the Federal government and states have ensured that child care was available as a critical support for eligible low-income working families, especially those making the transition from TANF cash assistance to work and for children and families involved with the state child welfare agencies. As a result, there is important information maintained in the eligibility records maintained by the state agencies administering child care programs under the Child Care and Development Block Grant Program of 1990 as amended. In many states, including New York, the enrollment for child care assistance is closely linked to other human services benefits programs, such as TANF, SNAP, Medicaid, and Low-Income Home Energy Program (LIHEAP).

Key components of the Child Care law and Federal regulations include:

- Lead state child care agency coordinates the provision of child care services with other Federal, state, and local child care and early childhood development programs.
- State must demonstrate how it will meet the specific child care needs of families receiving TANF or at risk of receiving TANF and who, through employment activities, will transition from TANF.
- Lead child care agency gives priority to children of families with very low family income and children with special needs.
- State agency accumulates specific case level individual recipient reports and provides quarterly case-level reports to the Department including sources of income (including TANF, SNAP, housing assistance, etc.).
- Eligibility criteria relate to other human services programs.

Unlike some of the other specific Federal human services laws and regulations discussed in this Toolkit, the issues of confidentiality and information sharing are absent in the laws and regulations creating and regulating child care. Unless regulated by The Privacy Act of 1974, as amended, the state determines the rules and practices for sharing of information. New York’s rules surrounding information sharing in Child Day Care can be found in 18 NYCRR 418- 1.15 (5) which states that information relating to an individual child is confidential and cannot be disclosed without written parental permission to anyone other than the office, its designees or other persons authorized by law. Information relating to an individual child may be disclosed to a social services district where the child receives a day care subsidy from the district, where the child has been named in a report of alleged child abuse or maltreatment, or as otherwise authorized by law. In addition, redisclosure of confidential HIV-related information, as defined in section 360-8.1, concerning a child receiving child day care is not permitted except in a manner consistent with article 27-F of the Public Health Law.

The Privacy Act clearly states that matching of individual data between different governmental agencies is permitted with prior written consent of the individual to whom the information pertains

(§552a(b)), or unless pursuant to a court order whereupon advance written consent is not required (§552a(b)(11)).

How to Share Information

Since child care information is protected under The Privacy Act, the information sharing option New York should consider is prior written consent authorization by the parent or guardian. It could also utilize court orders but since there are no court proceedings involved with child care services and the program, a court would only be present for other reasons such as an ongoing child welfare matter.

An authorization to share information can be drafted so that the individual opts in, or affirmatively agrees to share child care information with other system, or opts out, with the notice making clear that the information will be shared unless specifically prohibited by the individual.

Agency attorneys must consult with a Policy Subcommittee to determine the best course of action to proceed.

Regardless of the method used, it would be advantageous for New York State to bring together different agency heads and the Program and Legal Subcommittees to develop a process of sharing information that will lead to a written MOU including the details of what information will be shared, when, with whom, how the information will be shared and once shared, how the information will be maintained in a confidential manner.

The MOU is particularly important for states with child care and education systems linked, meaning that confidentiality and privacy requirements of the education system (i.e., FERPA) may apply. Similarly, some states integrate the Head Start and Pre-K programs with the child care system, or do joint funding of child care with Head Start and the Pre-K programs, so again, FERPA and information sharing requirements from other disciplines may be a consideration. By New York State agency leaders creating subcommittees of program and legal staff, the answers to these questions can be reached. (If the child care information falls within the purview of the education system, then FERPA would apply. In addition, if the child care information falls within FERPA and the information sharing is with child welfare for children in foster care, then the information sharing arrangement is covered by the Uninterrupted Scholars Act of 2013, which is discussed more fully in the earlier Education Chapter.)

Violence Against Women

Explicit in the Federal Violence Against Women law³¹ is strict confidentiality regarding information disclosed by victims of domestic violence, including their location. Any information shared by

³¹42 U.S.C. §12925

domestic abuse and violence programs must strictly ensure that the client authorizes the release of such information.

How to Share Information

There are circumstances where the sharing of information within the dictates of the federal law would be most helpful to the victims of domestic violence and their children. Information sharing with the TANF, SNAP, Medicaid, and possibly child welfare could facilitate the continuation of benefits and services essential to the women and her children. In order to accomplish such information sharing, it is essential that there be an MOU between the agency administering the domestic violence system and the other information sharing system. In addition, a release should be signed by the woman in order to share the information, with the clear dictates that the information will not contain her current whereabouts and that no information will be shared with any private citizen.

Temporary Assistance for Needy Families

Federal Law		New York State Law	
Title IV-A of the Social Security Act Temporary Assistance for Needy Families (TANF) 42 USC §601 et seq.		New York Social Services Law	
602(a)(1)(A)(iv)	Take reasonable steps as state deems necessary to restrict use and disclosure of information about individuals and families receiving assistance. Other than restrictions of The Privacy Act, at discretion of state and state laws and regulations; some limitations for data depending on source (i.e., sharing of data received from IRS is limited). Information shared between state and Federal government is kept confidential. State TANF program is independent of federal control except in areas mentioned in statute.	§136	NOTE: Public assistance and care is defined as family assistance, safety net assistance, Veteran assistance, medical assistance for needy persons, institutional care for adults and child care granted at public expense. Social Services Law §2 (18). All communications and information relating to a person receiving public assistance or care obtained by any social services official, service officer, or employee in the course of his or her work shall be considered confidential except as otherwise provided in this section. Nothing herein shall preclude a social services official from reporting to an appropriate agency or official, including law enforcement agencies or officials, known or suspected instances of physical or mental injury, sexual abuse or exploitation, sexual contact with a minor or negligent treatment or maltreatment of a child of which the official becomes aware in the administration of public assistance and care nor shall it preclude

			<p>communication with the federal immigration and naturalization service regarding the immigration status of any individual.</p> <p>Nothing in this section shall prevent registration in a central index or social service exchange for the purpose of preventing duplication and of coordinating the work of public and private agencies.</p>
602(a)(1)(A)(vi)	Conduct program designed to reach other state systems, including local law enforcement officials, education system, teenage pregnancy prevention programs, and statutory rape programs.		
602(a)(7)(A)(i)	Screen and identify persons receiving TANF with a history of domestic violence while maintaining the confidentiality of the circumstances.		
602(a)(7)(A)(ii)	Refer persons who are victims of domestic violence to counseling and supportive services.		
602(a)(7)(A)(iii)	Ability to waive program requirements (i.e., time limits, residency requirements, child support cooperation, family cap provisions) to enable parents to escape domestic violence or unfairly penalize such persons who have been victimized or who are at risk of further domestic violence.		
602(a)(5)(B)(iii)(dd)	Custodial parent may not be required as a condition of receiving TANF to cooperate with establishing the paternity of a child or entering a support order with respect to a child under particular circumstances; must work with domestic violence prevention and intervention organization.		
608(a)(2)(A) & (B)	State shall deduct from TANF an amount equal to not less than 25% of assistance or may deny family any assistance.		
608(a)(4)(A) & (B)	No assistance for teenage (under 18), who is not married, or has a minor child at least 12 weeks of age in his or her care, and has not successfully completed high school or its equivalent. In		

	order to obtain TANF, youth must attend high school or equivalent to attain diploma (with exceptions for domestic violence/child abuse).		
608(a)(5)(B)(iii)(aa)	Exception to rule that teenage parent and child must live in an adult-supervised setting: If determined that parent or the minor child is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the parent's own parent or legal guardian.		
608(a)(7)(C)(iii)	<p>Hardship exception to five years maximum TANF rule: If family includes individual who has been battered or subjected to extreme cruelty:</p> <ul style="list-style-type: none"> (i) Physical acts that resulted in, or threatened to result in, physical injury to the individual; (ii) Sexual abuse or sexual activity involving a dependent child; or (iii) Threats or attempts at physical or sexual abuse, mental abuse, or neglect or deprivation of medical care. 		
608(a)(9)(A)(i) & (ii)	Cooperation with law enforcement: state shall not use funds for assistance to persons fleeing to avoid persecution, or custody or confinement after conviction, for a crime which is a felony under the law of the place from which the individual flees (or for NJ, is a high misdemeanor), or for violating a condition of probation or parole imposed under Federal or state law.		
608(a)(9)(B)(i) – (iii)	State's safeguards against the use or disclosure of information about TANF applicants or		

	recipients shall not prevent the furnishing to a Federal, state, or local law enforcement officer, upon the request of the officer, with the current address of any recipient if law enforcement officer furnishes the name of recipient and notifies the TANF agency that the recipient is a fugitive felon and/or probation or parole violator, or the requested information is necessary for the officer to conduct the official duties and the location or apprehension of the recipient is within such official duties.		
608(a)(10)(A) & (B)	Family remains eligible for Medical Assistance if income is generated as a result of employment requirements under TANF or because of recipient of spousal support under Title-D of the Social Security Act.		
608(b)(2)(A)(ii) & (v)	Under individual responsibility plans, permits sharing information (educational, immunization, human services, and/or substance abuse treatment) of recipient and his or her children. Requirements for individual may include requirement to attend school, maintain certain grades and attendance, maintain school age children in school, immunizations, attending parenting and money management classes, employment related activities, undergo appropriate substance abuse treatment.		
609(a)(5)	State is penalized for failure to comply with paternity establishment and child support where there are no qualifying exceptions. Results in reduction of grant to state for the succeeding fiscal year by not more than 5%.		
611(a)(1)(A)(ii) – (v)	States collect, on a monthly basis, information for families receiving TANF and SSI benefits. State provides disaggregated case record information to ACF through		

	quarterly reports.		
611(a)(1)(A)(ix)	State provides disaggregated case record information to ACF through quarterly reports on families receiving TANF and subsidized housing, Medical Assistance (Title XIX), SNAP, or subsidized child care (the amount received for the latter two).		
Grants to States for Public Assistance Programs 45 CFR §201 et seq.		18 NYCRR	
205.25	In respect to any individual receiving SSI benefit, regardless of the amount, individual is eligible for SNAP and SNAP shall obtain amount of SSI benefits from SSA. Social Security Act requires state to retain Social Security Number of individual to determine if the individual has earnings and TANF eligibility. Requires them to do that matching, but not to share the individual's Social Security Number further. How the state discloses this information to the applicant/recipient is left to the state's discretion.		
205.50(a)	State plan must include the following requirements:		
205.50(a)(1)(i)	Pursuant to state statute, imposing legal sanctions, the use or disclosure of information concerning applicants and recipients will be limited to the purposes directly connected with one or more of the following:		
205.50(a)(1)(i)(A)	Administration of state approved plan under Title IV-A, or state plan or program under Title IV-B (child welfare), IV-D (child support enforcement), IV-E (foster care maintenance), or IV-F, or under Titles I, X, XIV, XVI, XIX (Medicaid), XX (social services), or the SSI program established under Title XVI. Such purposes include establishing eligibility, determining the amount of assistance, and providing services for applicants and recipients.	357.6	<p>The New York State Department of Social Services, local social services districts, and other authorized agencies shall disseminate to staff a policy and procedures manual establishing and describing:</p> <ul style="list-style-type: none"> a) responsibilities of staff to safeguard information pursuant to statute, regulation and policy; b) procedures for properly informing clients of records collection, access, utilization and dissemination; c) policies and practices relating

	Method of sharing left to state discretion in its state's plan.		<p>to the safeguarding of confidential information by the agency;</p> <p>d) procedures relating to employee access to information; and</p> <p>e) disciplinary actions for violations of confidentiality statutes, regulations and policies.</p>
205.50(a)(1)(i)(C)	Administration of any other Federal or Federally-assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need.		
205.50(a)(1)(i)(G)	Reporting to appropriate agency or official information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child under circumstances which indicate that the child's health or welfare is threatened.		
205.50(a)(2)(i)	In the state plan, agency will have clearly defined criteria governing types of information that are safeguarded and conditions under which such information may be released or used. Types of information to be safeguarded include but are not limited to the following:	360-8 Confidentiality of HIV and AIDS-Related information	<p>a) Definitions</p> <p>1) Acquired immune deficiency syndrome, as may be defined from time to time by the Centers for Disease Control of the United States Public Health Service.</p> <p>2) HIV infection means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.</p> <p>3) HIV related illness means any illness that may result from or may be associated with HIV infection.</p> <p>4) HIV related test means any laboratory test or series of tests for any virus, antibody, antigen or etiologic agent whatsoever thought to cause or to indicate the presence of AIDS.</p> <p>5) Confidential HIV related</p>

			<p>information means any information, in the possession of a person who provides one or more health or social services or who obtains the information pursuant to a release of confidential HIV related information, concerning whether an individual has been the subject of an HIV related test, or has HIV infection, HIV related illness or AIDS, or information which identifies or reasonably could identify an individual as having one or more of such conditions, including information pertaining to such individual's contacts.</p> <p>6) Health or social service means any public or private care, treatment, clinical laboratory test, counseling or educational service for adults or children, and acute chronic, custodial, residential, outpatient, home or other health care provided pursuant to the Public Health Law or the Social Services Law; public assistance or care as defined in article one of the Social Services Law; employment-related services, housing services, foster care, shelter, protective services, day care, or preventive services provided pursuant to the Social Services Law; services for the mentally disabled as defined in article one of the Mental Hygiene Law; probation services, provided pursuant to article twelve of the Executive Law; parole services, provided pursuant to article twelve-B of the Executive Law; correctional services, provided pursuant to the Correction Law; and detention and rehabilitative services provided pursuant to article nineteen-G of the Executive Law.</p> <p>7) Person includes any natural persons, partnership, association, joint venture, trust, public or private corporation, or State or local government agency.</p>
--	--	--	---

			<p>8) Capacity to consent means an individual's ability, determined without regard to the individual's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure, or of a proposed disclosure of confidential HIV-related information, as the case may be, and to make an informed decision concerning the service, treatment, procedure or disclosure.</p> <p>b) Applicability. This section applies to any person who obtains or receives confidential HIV related information in the course of administering the medical assistance program (MA) and implements article 27-F of the Public Health Law. Any use or disclosure of such confidential HIV related information made on or after February 1, 1989 is subject to the terms of this section.</p> <p>c) Standard of use and disclosure. Confidential HIV related information can be used or disclosed only for a purpose which is directly connected with the administration of the MA program and consistent with the limitations of section 2782 of the Public Health Law relating to persons to whom or entities to which confidential HIV related information may be disclosed. As applied to this section, such a purpose may include supervision, monitoring, administration or provision of MA care, services and supplies. Any adverse case action taken against an applicant for or recipient of MA must be based solely upon the terms and conditions of eligibility and the furnishing of care, services and supplies as established by the Social Services Law and this Title. All social services district officials, employees and their agents are responsible for ensuring that no discrimination or abuse occurs against an applicant for or recipient of MA about whom confidential HIV related information is maintained.</p> <p>d) Access to confidential HIV related information. No social services</p>
--	--	--	---

			district official, employee or agent will have access to confidential HIV related information except as necessary for the fulfillment of a purpose which is related to an official duty of such official, employee or agent and is directly connected with the administration of the MA program.
205.50(a)(2)(i)(B)	Information related to social and economic conditions or circumstances of particular individual including information obtained from any agency pursuant to 205.55 (requesting and furnishing eligibility and income information; information obtained from IRS and Social Security Administration must be safeguarded in accordance with procedures set forth by those agencies.		
205.50(a)(2)(i)(C)	Agency evaluation of information about a particular individual.		
205.50(a)(2)(i)(D)	Medical data, including diagnosis and past history of disease or disability, concerning a particular individual.		
205.50(a)(2)(ii)	Release of information concerning individuals is restricted to persons or agency representatives who are subject to confidentiality standards comparable to the TANF Agency.		
205.50(a)(2)(iii)	Except in an emergency, family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when consent for release of information cannot be obtained, individual will be notified as soon as possible thereafter.		
205.55(a)(5)	Allows requesting and furnishing eligibility, income information from State agencies administering TANF, Medicaid, Unemployment Compensation, SNAP, and SSI. Method of sharing left to state		

	discretion.		
233.20(a)(1)(ii)	Requirements how TANF State Plan must account for needs, income, and resources of individuals receiving SSI benefits or Title IV-E assistance to determine the need and amount of the assistance payment of TANF assistance unit. Method of sharing left to state discretion.		
233.20(a)(3)(v)(B)	TANF agency must have access to verify child support-assigned payment information to determine eligibility for assistance payment.		
232.20(a)(3)(vi)(A)	In family groups living together, income of spouse and income of parent is considered available to children under 21; TANF must have access to amount of SSI benefits or Title IV-E assistance provided to spouse, parent and/or child. Social Security Act requires state to retain Social Security Number of individual to determine if the individual has earnings and TANF eligibility. Requires them to do that matching, but not to share the individual's Social Security Number further. How the state discloses this information to the applicant/recipient is left to state's discretion.		
235.70(a)	TANF must provide prompt notice to child support and Medicaid assistance agency when aid is furnished to a child who has been deserted or abandoned by parent, to the parent(s) with whom the child lives, or to a pregnant woman. Method of sharing left to state discretion.		
262.1(a)(6)	Monetary penalty against state for failure to enforce penalties for recipients not cooperating with Title IV-D agency.		

	Method of sharing left to state discretion.		
264.10	States must meet requirements of IEVS and request information from IRS, State Wage Information Collection Agency, SSA, and INS.		
264.30(a)	State must refer individuals to Child Support Enforcement for children for whom paternity has not been established or a support order needs to be established, modified or enforced; referred individuals must cooperate unless an exception is in place under the Federal child support law. Method of sharing left to state discretion.		
264.30(b) & (c)	Child support agency must advise TANF agency if individual is not cooperating and TANF must then decide whether to deduct amount from TANF assistance or deny TANF assistance.		

Food and Nutrition Services

Federal Law

7 C.F.R. §210 et seq.

Children Nutrition Programs-Subchapter A

Supplemental Nutrition Assistance Program (SNAP)

51 U.S.C. §2011 et seq.

2014(a)	Eligible if receives TANF and SSI benefits.
2014(d)	Exclusions from income may include cash assistance under TANF and medical assistance.
2014(g)(6)	Exclusions of financial resources from title IV-A and medical assistance.
2014(n)	Can obtain support information directly from state agency in lieu of obtaining current information from household.
2015(c)(3)	Reports by households can be filed at same time for SNAP and TANF.
2015(l)(1)	Requirement for custodial parent to cooperate with paternity/support.
2015(m)(1)	Requirement for non-custodial parent to cooperate with paternity/support.
2020(e)(8)	Exception to safeguards to prohibit use or disclosure of information to persons directly connected with administration of SNAP, Federal Assistance Programs, or Federally-assisted programs.

Food and Nutrition Service

7 C.F.R. §210 et seq.

Children Nutrition Programs-Subchapter A

210.9(b)(19); 220.7(c)(14)(ii)	Each school food authority must maintain files of children receiving benefits from SNAP, TANF, or Head Start.
215.13(a)(f) (Free milk); 225.15(f) (Summer foods program); 245.6(a)(6) (free & reduced priced meals & free milk)	Application includes Privacy Act notice that Social Security Number and other application information. Social Security Number is not required if foster child, or SNAP or TANF case number.
215.13a(g)(2); 225.15(g)(2)	Require parental release to share identifying information outside of program and enforcement.
215.13(h); 225.15(h); 226.23(h); 245.6(h)	With proper written agreement—and unless parents decline—eligibility information may be disclosed to Medicaid/SCHIP for enrollment purposes.
215.13(j); 225.15(j)	Parental consent requirements.
245.6(b)(2)	Direct certification for free meals or free milk with TANF.
245.6(b)(9)	Information about children and their households obtained through direct certification must be kept confidential.
245.6a(g)	Direct certification with Medicaid, SCHIP.
247.8	For Commodity Supplemental Food Program, release with boxes permitting or not permitting the release of information to other public assistance programs to determine eligibility.
247.36	Must restrict use or disclosure of information obtained from applicants and participants unless directly connected to administration and enforcement of program.
249.24	Data safeguarding procedures include taking reasonable steps to keep applicant and participant information private.

Food and Nutrition Service
7 C.F.R. §210, et seq.

Food Stamp and Food Distribution Program-Subchapter C

272.1(c)(1)	<p>Use or disclosure obtained from food stamp applicant or recipient households shall be restricted to:</p> <ul style="list-style-type: none"> (i) Persons directly connected with administration or enforcement of Food Stamp Act or regulations, other Federal assistance programs, federally-assisted State programs providing assistance on a means-tested basis to low income individuals, or general assistance programs; (ii) Persons directly connected with administration or enforcement of programs which are required to participate in State income and eligibility verification system to the extent the food stamp information is useful in establishing or verifying eligibility or benefit amount under those programs; (iii) Persons directly connected with verification of immigration status of aliens applying for food stamp benefits, through Systemic Alien Verification for Entitlements Program to the extent information is necessary to identify individual for verification purposes; (iv) Persons directly connected with the administration of Child Support Program in order to assist in its administration, and to HHS employees to assist in establishing or verifying eligibility or benefits under Titles II and XVI of the Social Security Act; (v) Local, state, or Federal law enforcement officials, upon written request (including identity of individual requesting information and authority to do so, violation being investigated, and identity of person on whom the information is requested), for purpose of investigating alleged violation of Food Stamp Act or regulation; (vi) Local, state, or Federal law enforcement officials, upon written request for purpose of
-------------	---

	obtaining address, Social Security Number, and, if available, photograph of any household member, if member is fleeing to avoid prosecution or custody; or (vii) Local educational agencies administering National School Lunch Program for purpose of directly certifying the eligibility of school-aged children for receipt of free meals under School Lunch and School Breakfast programs.
272.8(a)(1)	State agencies may maintain and use an income and eligibility verification system. (IEVS); State agencies may request wage and benefit information and use that information to verify eligibility for and amount of food stamp benefits due to eligible households, including any considered excluded household members and their Social Security Numbers. Information provider agencies include: (i) State Wage Information Collection Agency which maintains wage information (ii) Social Security Administration, including information available from SSA regarding Federal retirement, and survivors, disability, SSI and related benefits (iii) Internal Revenue Service (iv) Agency administering Unemployment Insurance Benefits.
272.8(a)(2)	State agencies may exchange with state agencies administering certain other programs in IEVS information about food stamp households' circumstances which may be of use in establishing or verifying eligibility or benefits amounts under Food Stamps Program and those programs. State agencies may exchange such information with these agencies in other States when they determine that same objectives are like to be met and these programs are: (i) TANF (ii) Medicaid (iii) Unemployment Compensation (iv) Food Stamps (v) Any State program administered under Titles I, X, XIV (adult categories) or XVI (SSI) of Social Security Act.
272.8(a)(3)	State agencies must provide information to Child Support and Titles II and XVI (SSI) of Social Security Act.
272.8(a)(4)	State agencies must execute data exchange agreement with other agencies, specifying information to be exchanged and procedures which will be used to exchange information.
273.2(b)(4)	Privacy statement required for all applications and re-certifications that information will be verified through computer matching programs and information may be disclosed to other Federal and state agencies.
273.2(b)(4)(i)	Food Stamp Application form must contain Privacy Act statement that the collection of information, including SSN of each household member is authorized by law and information will be used to determine eligibility or continuation of eligibility by comparing through computer matching programs.
273.2(b)(4)(ii)	Information may be disclosed to other Federal and state agencies for official examination and to law enforcement officials for purpose of apprehending persons fleeing to avoid law.
273.2(f)(1)(v)	State verifies the Social Security Number by submitting to SSA for verification.
273.2(f)(4)(7)	SSI benefits verified through SDX and Social Security benefit information through BENDEX.
273.2(k)(A)(3) & (D)	State agency may verify through SDC and BENDEX.
273.6(f)	Access to information regarding applicants/participants who receive title XVI benefits using the SDX.
273.11(e)	Residents of drug and alcohol treatment and rehabilitation programs are eligible for SNAP but must share information.
273.11(j)(1)	Regarding reduction of public assistance benefits, the State agency, rather than the household, shall be responsible for obtaining information regarding sanctions of individuals from other programs

	and changes in those sanctions.
273.11(k)	If a disqualification is imposed on a member of a household for failure to perform an action required under means-tested public assistance program, state agency may impose same disqualification on member under SNAP.
273.11(l)	Can sanction family of minor children who fails to attend school or adult who fails to work on attaining a secondary school diploma or recognized equivalent.
273.11(o)(1)	State's option to disqualify custodial parent for failure to cooperate with Child Support program.
273.11(p)(1)	State's option to disqualify non-custodial parent for failure to cooperate with Child Support program.
274.8(b)(10)(i)	State agencies are responsible to establish telecommunication links and any other arrangement with other state agencies necessary for interoperable transactions to such other state EBT authorization systems.

SSI

Federal Law

Title XVI of the Social Security Act, Supplemental Security Income for the Aged, Blind and Disabled 42 USC §1381, et seq.

1382(e)(5)	Any income paid to individual pursuant title IV-A (TANF), IV-E (foster care maintenance), section 412(e) of Immigration and Nationality Act (relating to assistance for refugees), section 501(a) of Public Law 96-422 (relating to assistance for Cuban and Haitian entrants) or Act of November 2, 1921 (relating to assistance furnished by the Bureau of Indian Affairs) shall be taken into account in determining the amount of SSI benefit for that month.
1382(e)(1)(A)	No person is eligible individual or eligible spouse for that month if that person is an inmate of public institution.
1382(e)(1)(B)	Deduction of SSI benefit during the month while eligible individual or spouse is in a medical treatment facility receiving medical assistance payments for the individual under title XIX of Social Security Act or for a child, under Children's Health Insurance Program.
1382(e)(1)(G)	If stay is likely not to exceed three months, AND such person needs to maintain and provide for the expense of the home or living arrangement to which he/she may return upon leaving the facility, no deduction of SSI benefits.
1382(e)(1)(H)	Social Security may enter into agreements for making determinations or providing information or assistance in making determinations, with appropriate state and local public and private agencies and organizations.
1382(e)(1)(I)(iii)	Social Security shall enter into an agreement with any interested state or local institution comprising a jail, prison, penal institution, or correctional facility, where the institution shall provide on a monthly basis the names, social security numbers, dates of birth, confinement commencement dates and any other identifying information.
1382(e)(1)(I)(iii)	Social Security shall provide information obtained pursuant to agreements to any Federal or Federally-assisted cash, food, or medical assistance program for eligibility and other administrative purposes under such program.
1382(e)(4)(A)(i) & (ii)	No person shall be considered eligible individual or eligible spouse regarding any month if person is fleeing to avoid prosecution, or custody or confinement after conviction for a crime or an attempt to commit a crime which is a felony according to laws of the place from which the person flees or, in jurisdictions that do not define crimes as felonies, is a crime punishable by death, or imprisonment for a term exceeding one year regardless of the actual sentence imposed, or violating a condition of probation or parole under Federal or state law.
1382(e)(5)	Social Security shall furnish (unless prohibited by Internal Revenue Code, 26 USC 6103) any

	Federal, state, or local law enforcement office, upon the written request of the officer, with the current address, Social Security Number and photograph (if available) of any SSI recipient, if the officer furnishes Social Security with the name of the recipient and any other identifying information requested to establish the unique identity of the recipient.
1382a(b)(14)	In determining income of individual and eligible spouse, exclude for a student under age 22 who is regularly attending a school, college, university, or course of vocational or technical training, exclude assistance paid for dwelling unit occupied by individual by federal housing acts.
1382b(c)(2)(B)	Social Security shall make information available, on request, to any state agency administering medical assistance program under Title XIX.
1382e(a)	Any cash payments made by state on a regular basis to individuals who are receiving SSI will not be included as income for eligibility purposes.
1382h(a)(1)	Any person determined to be eligible individual or eligible spouse by reason of disability and who receives a supplementary payment will remain eligible for medical assistance under Title XIX.
1382i(a)	Ability for pilot programs to provide medical and social services for certain handicapped individuals.
1382i(c)(1)-(5)	Plan must describe how medical and social services will be provided and unless the services are not to be provided pursuant to Title XIX (medical assistance) and Title XX (social services), must describe how services will be provided.
1382j(d)(2)	Social Security shall enter into agreements with Department of State and Attorney General and any information available shall be provided for eligibility purposes, and such persons shall inform any sponsor of an alien, at the time such sponsor executes an affidavit of support or similar agreement, of the requirements imposed by SSI requirements.
1382j(d)(2)	Social Security will verify information independently to determine eligibility and shall request and use information available to IRS and any information available from state systems.
1383(e)(8)(A)	Social Security shall request from Immigration and Naturalization Center or Centers for Disease Control to provide whatever medical information, identification information, and employment history with respect to any alien who has applied for SSI benefits to the extent that the information is relevant to eligibility determination.
1383(e)(9)	At least four times annually, Social Security shall furnish Immigration and Naturalization Service with the name and address and other identifying information of any individual who Social Security knows is not lawfully present in country and shall ensure that each state provides such information at such times with respect to any individual who the state knows is not lawfully present in the country.
1383(f)	Any Federal agency shall provide information needed by Social Security for purposes of determining eligibility for or amount of benefits, or verifying other information.
1383(n)	Social Security and Department of Agriculture shall develop a procedure under which an individual who applies for SSI shall also be permitted to apply at the same time for SNAP benefits.
1383c(a)	Social Security may enter into an agreement with any state which wishes to do so where the Social Security will determine eligibility for medical assistance in the case of aged, blind, or disabled individuals pursuant to Title XIX.

Child Care & Development

Federal Law	New York State Law
Child Care and Development Block Grant 42 USC §658	NYS Social Service Law § 390

658A(b)(4)	A goal is assisting parents to achieve independence from public assistance.	N.Y. Social Services Law §390 (3)(c)(iv)	Nothing in this paragraph shall be construed to require or permit the disclosure either orally or in writing of any information that is confidential pursuant to law.
658D(b)(1)(D)	Lead agency coordinates provision of child care services with other Federal, state, and local child care and early childhood development programs.	18 NYCRR 418- 1.15 (5)	Information relating to an individual child is confidential and cannot be disclosed without written parental permission to anyone other than the office, its designees or other persons authorized by law. Information relating to an individual child may be disclosed to a social services district where the child receives a day care subsidy from the district, where the child has been named in a report of alleged child abuse or maltreatment, or as otherwise authorized by law. Redislosure of confidential HIV-related information, as defined in section 360-8.1 of this Title, concerning a child receiving child day care is not permitted except in a manner consistent with article 27-F of the Public Health Law.
658E(c)(2)(H)	State must demonstrate ability to meet the specific child care needs of families receiving or at risk of receiving TANF and who, through work activities, will transition from TANF.		
658K(a)(1)(v)	On a monthly basis, state must collect information regarding sources of family income including TANF, housing, or SNAP assistance.		
Child Care and Development Fund			
45 CFR §§98 and 99 et seq.			
98.1(4)	Goal is to assist parents to achieve independence from public assistance.		
98.14(a)(1)(A) & (D)	In developing the state plan, state agency must coordinate child care services with other Federal, state and local childhood development programs, public health agencies, public education, and TANF.		
98.20	Describes provisions for child's eligibility for child care services and interface between eligibility requirements interface and other Federal programs (i.e. TANF, child welfare).		
98.33(b)	State agency informs parents receiving TANF about work conditions and that exception to work condition is the		

	requirement to demonstrate inability to obtain needed child care for child(ren) under age six.		
98.44	Lead agency shall give priority for services to children of families with very low family income and to children with special needs.		
98.71(a)(6)	Lead agency submits quarterly case-level report to HHS including sources of family income (TANF, housing assistance, SNAP, other)		
98.71(a)(13)	In these reports, the head of the household's Social Security Number is included if known.		
Guidance & Reference			
ACF 801 Form and instructions	Format for state child care agency's monthly collection of case-level information and its quarterly reports to HHS.		
ACYF-PI-CC- 00-04	Program instructions issued by Child Care Office regarding collection of Social Security Numbers in the eligibility process.		

Child Welfare

| Sharing Child Welfare Information with Other Systems

The Case for Sharing

Child abuse and neglect can have lifelong adverse health, social, and economic consequences. These consequences include behavioral health conditions, behavioral problems, delinquency and adult criminal activities, violent behavior, increased risk of chronic diseases, disability from physical injury, reduced health-related quality of life, and lower levels of adult economic capacity and are also associated with large societal costs.³²³³

Children and youth in foster care are very often involved with multiple systems and present complicated issues in addition to normal development, childhood, and adolescence. Additionally, there is court involvement for all children in foster care receiving federal reimbursement, and so for the most reasoned decisions and to meet mandated and recommended permanency time goals, the judiciary and the parties in the court proceedings must have current and accurate information regarding the subject children and parents, about TANF, child support, child care, health and behavioral health and other public benefits programs.

In order to best serve children and families involved with the child welfare system, case workers and other professionals need a complete picture of the family. To that end, all relevant information must be able to be accessed and, where necessary, shared. Such information includes the reason that the child and family are known to the system, services currently or previously provided, the status of any court involvement and, if the child is in foster care, health, mental health, education, behavior and other information.

In reviewing numerous federal laws dealing with child welfare and foster care services, most if not all of the applicable legislations recognize the need for information sharing by the child welfare system with other systems and encourages or mandates that systems work together to increase successful outcomes for children and youth in foster care.

According to Federal law, there are a number of different situations where the child welfare system could share information to improve outcomes, increase efficiencies, and reduce redundancies. They include linking with:

- TANF/Medicaid systems, to facilitate a child's eligibility determination for Title IV-E foster care maintenance payments.
- Medicaid/health systems on the medical treatment for the parent with a chronic disease.
- Schools to facilitate school stability and education improvement for children in foster care.

³²Fang, X., et al., "The economic burden of child maltreatment in the United States and implications for prevention," *Child Abuse & Neglect* (2012).

³³ Fang, X., et al. Using an incidence-based approach, the study estimates the average life cost per victim of child abuse/child neglect to be \$210,012 for non-fatal victim and \$1,272,900 for fatal victim, for a total cost of \$124 billion as of 2008.

- Child Support to find family members to provide kinship care for a child that must be placed in out-of-home care.
- TANF to transfer information from the child under the parent's coverage to the child welfare system.
- The juvenile justice system to avoid both the child welfare case worker and the probation officer having to include the same information in each of its systems for shared cases.
- The mental health system on mental health services provided to the child to determine appropriateness of the child's treatment.
- Drug and alcohol treatment system on treatment services to the addicted parent for permanency purposes, including the parent's ability to provide custodial responsibilities.

At the meeting for “Child Welfare, Education and the Courts: A Collaboration to Strengthen Educational Successes of Children and Youth in Foster Care” held in November 2011 and hosted by the United States Departments of Health and Human Services and Education, a major issue was the critical need for improved data collection and information sharing between child welfare, education and the courts. According to the summary prepared by the National Working Group on Foster Care and Education, there were real and perceived barriers preventing information sharing resulting from federal confidentiality laws. Discussions ensued during the convening regarding student-specific information sharing of the foster child's educational and foster care status, services and needs. As a result, each team developed state plans to improve the educational outcomes for children and youth in foster care. Many of the plans included resolving information to be shared under FERPA and CAPTA as well as the state confidentiality laws.

The Administration for Children and Families (ACF), the Center for Medicare and Medicaid Services (CMS), and the Substance Abuse and Mental Health Services Administration (SAMHSA) issued a joint letter on November 23, 2011 to all state directors to strengthen their systems of prescribing and monitoring the use of psychotropic medication among children in foster care. This joint letter was followed by a two-day working convening on August 27 and 28, 2012, “Because Minds Matter: Collaborating to Strengthen Management of Psychotropic Medications for Children and Youth in Foster Care.” The meeting brought together representatives from state child welfare, Medicaid, and mental health systems from all fifty states, the District of Columbia, and Puerto Rico, as an opportunity for state leaders to enhance cross-system efforts ensuring appropriate use of psychotropic medications and to discuss state-of-the-art

information on cross-system approaches for improving mental health and well-being.

Similarly, New York State laws protect the confidentiality and privacy of information concerning child welfare and foster care services. But the laws also mandates that information from various systems be contained in the permanency report for each child in out-of-home care, information be shared by the child welfare system with other systems, and that systems work together to increase successful outcomes for these children and youth.

Applicable Federal Legislation

Included in this section are key provisions of the important Federal child welfare laws and how each supports information sharing with other systems. None of the Federal child welfare laws ban information sharing, but they do rightly recognize the sensitivity of family circumstances that brought them in contact with systems.

The Child's Bureau Child Welfare Policy Manual (CWPM) provides departmental policies on information-sharing and confidentiality.³⁴ Policies on CAPTA, Titles IV-E and IV-B of the Social Security Act, and provisions of confidentiality and information-sharing may be accessed under each law's title.

Child Abuse Prevention and Treatment and Adoption Reform (CAPTA)

CAPTA seeks to improve the intra- and inter-departmental coordination functions and activities performed by other entities within HHS also involved in child abuse and neglect. HHS is to consult with other Federal agencies that operate clearinghouses and with such departments for sharing of information involving child abuse and neglect. CAPTA's key components are:

- Generally, requires a State to maintain the confidentiality of all child abuse and neglect reports and records in order to protect the rights of the child and the child's parents or guardians; however, allows release to certain individuals and entities, including other entities authorized by statute to receive information pursuant to a legitimate State purpose.
- Specific reference that the state must collect and maintain information regarding the incidence of child abuse and neglect and the relation of such cases to alcohol and drug abuse by the parent; this invites the need for information sharing between systems.
- Addresses "case specific information" sharing on a universal basis to ensure, to the extent practical, the integration with other case-specific based foster care and adoption data collected by HHS.
- Discussion of interdisciplinary programming and research to protect children from abuse and neglect and improve the well-being of abused and neglected children. This is stressed regarding interagency collaboration between the child protection system and the juvenile justice system, including methods of continuity of treatment planning and services.
- Discussion about enhancing the linkages between child welfare agencies to coordinate the provision of services with health care agencies, alcohol and drug abuse treatment and prevention services, education institutions, and mental health agencies. Such linkages are necessary to ensure that victims of child maltreatment have their physical health, mental health, and developmental needs appropriately diagnosed and treated.
- Demonstration grants available for innovative partnerships in responding to reports of child abuse and neglect with law enforcement and developmental disability agencies, and

³⁴http://www.acf.hhs.gov/programs/cb/laws_policies/index.htm.

substance abuse treatment, health care, domestic violence prevention, and mental health services entities.

- Funding for multidisciplinary teams and interagency protocols to enhance investigations.
- Grants for financing the start-up, maintenance, expansion or redesign of specific family resource and support services including disability, mental health, and housing services.

Nothing in CAPTA presents an absolute barrier to information sharing. The law states that information is shared “to the extent practical.” Therefore, there must be a careful review of the information to be shared. CAPTA also states that methods of information sharing must ensure confidentiality of records relating to case specific data. Public health, mental health and developmental disabilities agencies must assure that victims of child maltreatment have their physical health, mental health, and developmental needs appropriately diagnosed and treated in accordance with Federal privacy laws.

Child and Family Services Improvement and Innovation Act

This law mandates that the state child welfare agencies develop and implement plans to meet the health and mental health needs of infants, children and youth who are in foster care, and ensures that child-specific health and mental health services are comprehensive, appropriate and consistent, with their particular needs. Other key provisions are:

- With other systems, including the state’s Medicaid agency, the child welfare system must develop a number of protocols to determine appropriate medical treatment for children. These may include appropriate use and monitoring of psychotropic medications, oversight and coordination of health care and mental health services, and oversight of prescription drugs.
- Child welfare must partner with the developmental disability system to address the developmental needs of children under five years of age.
- Requires close coordination with individual and family therapy, substance abuse treatment, assistance regarding domestic violence, and child care services.
- Provides funding for programs to assist children affected by parental substance abuse.
- Permits foster care maintenance placements for a child living with parent(s) in a long-term therapeutic family treatment center.
- Requires a written educational stability plan for each child in foster care, including assuring that the initial and all subsequent foster care placements take into account the appropriateness of the current educational setting and the proximity to the school where the child is enrolled at the time of placement. The child welfare system must coordinate with the appropriate local educational agencies (LEA) to ensure that the child remains in the school where he or she was enrolled at the time of the placement unless contrary to the child’s best interest. Children in foster care must be provided immediate and appropriate enrollment in a new school with all educational records supplied to the school.

- Law makes clear that data must be interoperable and must incorporate interoperable standards developed and maintained by intergovernmental partnerships, such as the National Information Exchange Model (NIEM).

Fostering Connections to Success and Increasing Adoptions Act

Fostering Connections offers few barriers to information sharing. It places specific mandates on the child welfare system for education stability, health oversight and coordination, and transitional planning for children and youth in foster care and, while it does not specifically discuss interoperability, it references the development and implementation of an electronic health record and the establishment of a “medical home” for every child in foster care. Under Fostering Connections, the foster care agency must:

- Ensure educational stability for a child while in foster care, including assurances that placement takes into account the appropriateness of the current educational setting and the proximity of the placement to the school in which the child is enrolled at the time of placement.
- Coordinate with appropriate LEA to ensure that the child remains in the school in which the child is enrolled at the time of the placement or, if remaining in such school is not in the best interests of the child, immediate and appropriate enrollment in a new school with all of the educational records of the child provided to the school.
- With state’s Medicaid agency, develop a plan for ongoing oversight and coordination of health services for any child in foster care. This includes a coordinated strategy to identify and respond to physical, mental, and dental health needs.³⁵
- For every child in foster care attaining the age of 18 years of age, during the 90-day period immediately prior to that birthday, provide a transition plan through case management services and with assistance and direction by the youth. Plan must include specific options on housing, health insurance, education, continuing support services, work force supports and employment services.
- In addition, the law provides for grants for residential family treatment programs that enable parents and their children to live in safe environment of not less than six months and provide substance abuse treatment services, early intervention, medical and mental health, pre-school, and other services designed to provide comprehensive treatment supporting the family.

Statewide Automated Child Welfare Information Systems (SACWIS)

To avoid duplication of effort and achieve maximum use of first-hand information regarding children in foster care and their families, all child welfare information is to be directly entered into each state’s SACWIS system. Other primary system providers with shared cases or IV-E eligible cases can download or enter information directly into the SACWIS. It also provides for interfaces

³⁵ Specifications of plan are included in law—initial and follow-up health screenings, how health needs identified are treated and monitored, how medical information is updated and appropriately shared, steps to ensure continuity of health care services, oversight of prescription medicines, and active consultation with and involving physicians and other appropriate medical and other professionals in assessing health and well-being.

with other automated information systems including but not limited to court and juvenile justice systems, vital statistics, child support, and education.

The law states that the state should provide for electronic exchanges and referrals with other data collection systems including TANF, Medicaid, child support, and the National Child Abuse and Neglect Data System (NCANDS). At the same time, it does not specifically discuss interoperability or incorporating interoperable standards developed and maintained by intergovernmental partnerships.

Title IV-E of Social Security Act, Payments for Foster Care and Adoption Services

Title IV-E of the Social Security Act is the federal foster care program that provides reimbursement to states to provide safe and stable out-of-home care for children until the children can safely return home, are placed permanently with adoptive or legal guardianship families, or are placed in other planned arrangements for permanency.

Under Title IV-E, the law specifically states that programs at the local level will be coordinated with programs under TANF, Child and Family Services (Title IV-B of the Social Security Act), Social Services and Elder Justice (Title XX of the Social Security Act), and other programs under appropriate Federal laws. At the same time, the law states that the use or disclosure of individual information is restricted to purposes directly connected with the administration of the Title IV-E state plan. The law then states the following exceptions to the limitation of use or disclosure of information:

- Exceptions to use individual information include TANF, Child and Family Services, Child Support and Establishment of Paternity, grants to state for Old Age Assistance for the Aged, Maternal and Child Health Services Block Grant, Aid to the Blind, Aid to the Permanently and Total Disabled, SSI, Medicaid, and Social Services;
- Exception for criminal and civil proceedings and law enforcement;
- Exception for administration of any Federal or Federally-assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need; and
- Exception for reporting and providing information to appropriate authorities with respect to known or suspected child abuse or neglect.

Educational, health, special needs and transition from foster care requirements of the statute include:

- Recipients of IV-E funding must assure that each child who has attained the minimum age for compulsory school attendance under state law is a full-time elementary or secondary school student or has completed secondary school. Written education case plan requirements for children in foster care must include name and address of education provider, grade level performance, and school record.
- Educational stability requirements for child in foster care, including assurances that placement into foster care takes into account the appropriateness of current education

setting and the proximity of the placement to the school in while child is enrolled at time of placement.

- Assurance that collaboration with appropriate local educational agencies to ensure that the child in foster care remains in the school which the child is enrolled at the time of placement or if remaining in such school is not in the best interests of the child, assurances by state child welfare and educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.
- Automatic determination of “special needs” under Adoption and Guardianship Program if child is receiving SSI benefits under Title XVI of Social Security Act. Child is “special needs” if child has presence of factors such as a medical condition or physical, mental, or emotional handicaps and it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance or Medicaid under Title XIX of Social Security Act.
- Written health care case plan requirements for children in foster care must include name and address of health care provider(s), record of child’s immunizations, known medical problems, medications and any relevant health information.
- Education and health information must be reviewed and updated and be provided to foster care parent/provider at the time of each placement and to youth at age of majority under state law.
- For every youth approaching age 18, the child welfare agency shall develop, in conjunction with the affected youth, an individualized transition plan that incorporates options on health insurance, education, support services, housing, work force supports and employment services, and durable health care decision processes (power of attorney and/or proxy).

As Title IV-E addresses confidentiality and privacy, the use or disclosure of information concerning individuals is restricted to purposes directly connected with the administration of the plan developed by the particular state under this Chapter.

Title IV-B of the Social Security Act, Child and Family Services

There are no specific barriers to information sharing in Title IV-B. Neither is there specific guidance for sharing information on a case-by-case basis.

The statute provides for coordination of services provided under IV-B, Title XX, TANF, and Title IV-E. It requires coordination with medical (physical, mental, and dental health) services and Medicaid to identify and respond to the health care needs of children in foster care placement. Requirements include: initial and follow-up health screenings; treating and monitoring identified health needs; updating and appropriately sharing medical information, including the development and implementation of an electronic health record; continuity of health care services including the establishment of a “medical home;” oversight of prescription medicines; and health-related transition plan steps for youth from adolescence to adulthood, including health insurance and information about a health care power of attorney or proxy. Other elements of this law include:

- Funding for states to create residential family treatment programs that enable parents and children to live in safe environments for not less than six months and provide substance abuse treatment services, early intervention, medical and mental health, pre-school, and other services designed to provide comprehensive treatment supporting the family.
- Funds to create time-limited family reunification services including but not limited to child welfare family counseling, inpatient, residential and outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, and child care services.
- Recommends coordinating the provision of services and benefits under other federal or federally-assisted programs serving the same populations.
- Targeted grants to regional partnerships to provide integration of programs and services that increase well-being, improve permanency, or enhance the safety of children in foster care or at risk of placement due to methamphetamine or other substance abuse. Collaboration can be interstate or intrastate and must be between the state's child welfare and Medicaid agencies and at least one more of the following systems: judiciary, juvenile justice, education, law enforcement, Indian tribe, child welfare service providers, or community health or mental health providers.
- Funds available for courts collaboration to collect and share relevant information, including description of how courts and child welfare agencies on local and state levels collaborate and jointly plan for the collection and sharing of all relevant data and information to demonstrate how improved case tracking and analysis of child abuse and neglect cases will produce safe and timely permanency decisions.
- Collaboration with courts and prisons for mentoring children of prisoners.
- Data standardization mandates for improved data matching. In designating standard data elements, recommends incorporating interoperable standards developed and maintained by intergovernmental partnerships, such as the National Information Exchange Model (NIEM). To the extent practicable, data reporting standards should incorporate widely-accepted, non-proprietary, searchable, computer-readable format, capable of being continually upgraded as necessary and incorporate existing nonproprietary standards.

Title XX of Social Security Act, Block Grants to States for Social Services and Elder Justice

Title XX is silent on methods for integrating and consolidating services and protecting certain privacy requirements, including specifically medical information and the implications of HIPAA. It gives no explanation for how information is to be shared on a case basis.

The purpose of Title XX is to consolidate and make flexible Federal assistance for states to provide social protective services for children and adults, day care, employment and training services, health and mental health services, developmental disability services, and drug and alcohol abuse and prevention. Title XX creates an intersection of social services, child welfare, and residential or non-residential drug and alcohol prevention and treatment programs as well as an intersection between social services and elder justice activities.

Applicable New York State Laws and Regulations

This section includes key provisions of the relevant New York child welfare laws and regulations and the barriers, if any, to information sharing. These laws are informed by the recognition that the identity of the family and the circumstances that brought it into contact with the system are sensitive and should be protected from general knowledge and shared only when necessary.

The Social Services Law (“SSL”) is the primary source of New York State laws concerning child welfare and the confidential nature of information about the child and family. General reference to social service confidentiality are found at SSL §136 which state that all communications and information relating to a person receiving public assistance or care obtained by any social services official, service officer, or employee in the course of his or her work, shall be considered confidential except as otherwise provided in this section. Public assistance or care includes family assistance, safety net assistance, veteran assistance, Medicaid, institutional care for adults and foster care.

Significantly, this section permits registration in a central index or social service exchange for the purpose of preventing duplication and of coordinating the work of public and private agencies.

New York Codes, Rules, and Regulations (NYCRR) also addresses child welfare. 18 NYCRR §357.3, entitled “Basis for disclosure of information,” contains specific guidance as to the release or sharing of public assistance information, including importantly some child-specific foster care information.

Child Protection

Child Protection records and information are confidential under SSL §422(4)(A). However, there are numerous exceptions in specific circumstances. For the purpose of this Toolkit, these exceptions to confidentiality include:

1. Child’s physician when he or she believes that the child may be abused or neglected;
2. Person authorized to place the child in protective custody;
3. Authorized agency with responsibility for the child;
4. Any person who is the subject of or named in the report;
5. Involved court;
6. Justice center for the protection of people with special needs or a delegate investigatory entity in connection with an investigation being conducted under article eleven of this chapter;
7. Probation service conducting an investigation where there is reason to suspect the child or the child’s sibling may have been abused or maltreated or a probation service or the state division of parole regarding a person to whom the service or division is providing supervision;
8. Law enforcement, which means a district attorney’s office, a sworn officer of the division of state police, the regional state park police, a city police department, or of a county, town,

village, or county police department or sheriff's office when needed to conduct a criminal investigation or criminal prosecution of a person who is the subject of a report;

9. Service provider to establish and implement or monitor a plan of service for the child or the child's family, or to monitor the provision and coordination of services with limited redisclosure to other agencies in order to facilitate services to the child or the child's family;
10. Criminal justice agency conducting an investigation of a missing child;
11. Child protective service of another state when the reports are necessary to conduct a child abuse or maltreatment investigation within its jurisdiction;
12. Law guardian;
13. Child care resource and referral program;
14. Members of an approved fatality review team; or
15. Entity with appropriate legal authority in another state to license, certify or otherwise approve prospective foster and adoptive parents.
16. In addition, SSL §422-A allows the state or a local social services commissioner to disclose child-protective information when such disclosure will not be contrary to the best interests of the child, the child's siblings or other children in the household and at least one of the following qualifying factors is present:
17. Subject of the report has been charged in an accusatory instrument with committing a crime related to a report maintained in the statewide central register; or
18. Investigation of the abuse or maltreatment of the child by the local child protective service or the provision of services by such service has been publicly disclosed in a report required to be disclosed in the course of their official duties, by a law enforcement agency or official, a district attorney, any other state or local investigative agency or official or by judge of the unified court system; or
19. There has been a prior knowing, voluntary, public disclosure by an individual concerning a report of child abuse or maltreatment in which such individual is named as the subject of the report as defined by subdivision four of section four hundred twelve of this title; or
20. child named in the report has died or the report involves an act that results in the child being placed, as certified by a physician, in serious or critical condition.

Preventive Services

Preventive Services confidentiality is governed by state regulation 18 NYCRR §423.7, which requires that all records established and maintained for applicants for and recipients of preventive services shall be confidential and shall be open for inspection by only:

- New York State Department of Social Services;

- Social services district;
- Preventive service agency or an authorized agency providing services to the child or other family members;
- Any person or entity upon an order of a court of competent jurisdiction;
- Any other person or entity providing or agreeing to provide services to the child or the child's family upon the execution of a written consent by the child or the child's parent.

Further, an agency or person given access to the names or other identifying information shall not divulge or make public the information except where authorized by a court or upon the execution of an appropriate written, dated consent by a parent or a child that specifies:

- Information to be disclosed;
- Entity to which disclosure is authorized;
- Whether or not redisclosure of the information by such entity is permitted;
- Purpose of the disclosure and any limitations on the use of the information by the entity.

For the purpose of this written consent, a parent includes a natural parent, adoptive parent, stepparent, guardian, or caretaker with whom a child resides. Finally, the person executing the consent must be told that he or she may terminate his or her authorization at any time.

Foster Care

Foster Care records, including those for placing out, adoption or boarding out of a child and the acceptance of guardianship or of surrender of a child, are confidential pursuant to SSL §372. Regulations at 18 NYCRR 357.3 provide specific guidance as to whom and in what circumstances such records can be shared.

Confidentiality of and access to information in the Child Care Review Service (CCRS) is spelled out in 18 NYCRR §465.1, which provides that the CCRS will issue individual identifiable information only to representatives of the State Department of Social Services, the local social services district responsible for the child, and any authorized agency as defined in SSL §371(10) providing services and care to the child and the child or his or her representative. Information will be released to authorized agencies and individuals only when the public welfare official providing such data is assured that:

- Confidential character of the information will be maintained;
- Information will be used for the purposes for which it is made available, such purposes to be reasonably related to the purposes of the public welfare program and the functioning of the inquiring agency.

The Family Court Act (FCA), §166, provides that the records of proceedings in the court are not open to the general public. However, the court in its discretion in any case may permit the inspection of any papers or records. Also, an authorized agency, or institution to which a child is committed is permitted to inspect the record of an investigation and may in the discretion of the court obtain a copy of the whole or part of such record.

There is family court involvement for all children in foster care. For the court to make the most reasoned decisions and to meet mandated and recommended permanency time goals under FCA Article 10-A, a permanency hearing is held approximately every six months, at which time the court must be provided with current and accurate information regarding the subject children and parents. FCA §1089(c) requires this permanency report to include at least up-to-date and accurate information regarding:

- Child's current permanency goal.
- Description of the child's health and well-being.
- Information regarding the child's current placement.
- Update on the educational and other progress the child has made since the last hearing.
- Description of the visitation plan or plans describing the persons with whom the child visits, including any siblings, and the frequency, duration and quality of the visits.
- Where a child has attained the age of fourteen, a description of the services and assistance that are being provided to enable the child to learn independent living skills.
- Description of any other services being provided to the child.
- Status of the parent, including the services that have been offered to the parent to enable the child to safely return home, the steps the parent has taken to use the services, and any barriers encountered to the delivery of such services.

What Information to Share

As a first step, the Policy Subcommittee, consisting of policy and practice experts and private agency partners in the case of child welfare, must determine what information is necessary to share. The group's list might look something like this:

- Name of youth
- Current Address
- Contact telephone number
- Electronic mail address (email)
- Date and place of birth

- Personal goals
- Projected date of discharge from care

Who Receives Shared Information

The next task is to determine which individuals require access to the information. Access should be based on either the person's responsibilities or the job classification's responsibilities and should be limited to only those persons with a need to know this information in order to perform their job responsibilities and to further provide and improve services to the youth.

How to Share Information

The Legal Subcommittee must determine, using this handbook as guide, whether the specific child welfare information required is confidential and protected based on Federal and New York state laws.

For each of the requirements in both sets of laws, the Legal Subcommittee must provide suggested vehicles for sharing the information and meeting the requirements.

Examples of protected child welfare information may be the factual information regarding the reasons that the child is in the custody of the state, or the mental health, drug and alcohol diagnosis, history, and treatment of the child, the parent, or others involved with the family, HIV/AIDS, communicable disease information, and possibly the exact placement of the child due to the circumstances of the placement and the danger to the child.

It is recommended that agency heads, as guided by the Policy and Legal Subcommittee recommendations create an MOU that includes with whom, and by what method in order to make a child welfare data sharing initiative successful. To share information on an individual case basis, and depending on the state's particular laws regarding the subject matters, the systems have three primary options:

- Authorization signed by the legally recognized individual;
- Individual court order mandating that information be shared; and
- State statute mandating that individual case information is shared to better serve the client and improve outcomes for the population.

Child Welfare and Child Abuse

Federal Law		New York State Law	
Title IV-B of the Social Security Act 42 U.S.C. §621 et seq.		General Statutory Discussion of Ability to Share Information In the Child Care Review Service NY Social Services Law §444	
622(b)(2)	Coordination between services provided using these funds along with services provided by title XX (social services), under part A of title IV (TANF), under part E of title IV (foster care maintenance), with a view to provide for the welfare and related services to best promote the welfare of children and their families.	1. The department in consultation with the advisory committee shall make regulations; (a) protecting the confidentiality of individual identifying information submitted to or provided by the service, and preventing access thereto, by, or the distribution thereof to, persons not authorized by law; (b) setting forth procedures for informing any child or his representative of the nature of the system and its uses; (c) allowing any child or his representative or any member of his family, an opportunity to review any information pertaining to such child or family and to request that any part of such information be amended or expunged; and (d) providing that the service shall remove from its records and expunge the individual identifying information, excluding non-identifying child or family data to be used for historical purposes, concerning any child who has been discharged from care. 2. Prior to final promulgation of any regulations as described in subdivision one of this section, the department shall, in addition to complying with all other advance notice requirements make proposed regulations available to all state agencies charged with the administration or supervision of child care programs and to local government agencies and persons that have expressed an interest in safeguarding information maintained by the service, and shall provide such agencies with an opportunity to comment on the proposed regulations. In promulgating final regulations the department shall consider any comments received. 3. Any persons willfully violating or failing to comply with the provisions of subdivision one of this section or willfully violating or failing to comply with any regulation which the department is authorized under such subdivision to make, shall be guilty of a misdemeanor. 4. The regulations promulgated pursuant to subdivision one of this section, shall provide that the information compiled and maintained by the service pursuant to paragraph (d) of subdivision ten of section four hundred forty-two of this title shall be subject to the confidentiality provisions of title six of this article.	
622(b)(15)(A)(i)-(vii)	Coordination between services provided using these funds and Medical Assistance agency, to identify and respond to the health, mental health, and dental health needs of children in foster care placements.		
		Confidentiality and Access of Information in the Child Care Review Service	

		18 NYCRR 465.1
629b(a)(3)	<p>State plan provides for coordination, to extent feasible and appropriate, of services and benefits under other Federal or Federally-assisted programs serving the same populations. To the extent feasible and appropriate, coordinate the provision of services under these funds and the provision of services or benefits under other Federal or federally-assisted programs serving the same populations.</p>	<p>(a) The use and disclosure of all information received for applicants for and recipients of foster care, preventive services and child protective services as a result of an indicated report of child abuse and maltreatment through the child care review service shall be subject to Parts 357, 423 and 432 of this Title. Any person, firm, corporation or association contracted by the department for the child care review service shall safeguard the confidentiality of information received or maintained by the service in the same manner, and will remain subject to the same confidentiality requirements of Parts 357, 423 and 432 of this Title.</p> <p>(1) Disclosure of information to authorized agencies and individuals.</p> <p>(i) The child care review service will issue individual identifiable information only to representatives of the State Department of Social Services, the local social services district responsible for the child, and any authorized agency as defined in subdivision 10 of section 371 of the Social Services Law providing services and care to the child and, in accordance with provisions below, the child or his representative.</p> <p>(ii) Information identifiable by caseload or by social worker will only be made available by the child care review service to the authorized agency employing the worker, the local social services district purchasing care and service, and the State Department of Social Services.</p> <p>(iii) Information not identifying children, families or caseworkers including aggregate information which may identify local social services districts and voluntary agencies will be public information.</p> <p>(iv) Except for recurring aggregate reports the child care review service will notify public and voluntary agencies of the public release of information specifically identifying their agency.</p> <p>(2) Safeguards for the disclosure of information to authorized agencies and individuals.</p> <p>(i) Information shall be released to authorized agencies and individuals only when the public welfare official providing such data is assured that:</p> <p>(a) the confidential character of the information will be maintained;</p> <p>(b) the information will be used for the purposes for which it is made available, such purposes to be reasonably related to the purposes of the public welfare program and the functioning of the inquiring agency;</p> <p>(c) the information will not be used for commercial or political purposes.</p> <p>(ii) The child care review service shall be notified of any use made of child and/or family specific information generated by the child care review service.</p> <p>(iii) Those agencies receiving individual identifying information from the child care review service shall designate a security officer responsible for assuring the maintenance of the confidentiality of said information.</p> <p>(iv) Those individuals who fail to take reasonable security precautions resulting in the unlawful disclosure of confidential information shall be guilty of a misdemeanor.</p>

		<p>(3) Disclosure of information to the child or representative.</p> <p>(i) Subject to the provisions of Parts 357, 423 and 432 of this Title, any child, his guardian, attorney parent or next of kin shall be provided an opportunity to review information on file with the child care review service pertaining to such child or family.</p> <p>(ii) Requests to review information on file with the child care review service shall be made to the State director of the child care review service. Denial of such request to review information shall be made in writing stating the reason or reasons therefore.</p> <p>(4) Requests for amendment or expungement of information.</p> <p>(i) Any child or his guardian, attorney, parent, or next of kin may request that any information on file with the child care review service be amended or expunged.</p> <p>(ii) Requests for amendment or expungement of information shall be addressed to the director of the child care review service. Within 30 days of the request, the director of the child care review service or his representative shall review the appropriateness of the request, and if in agreement, take appropriate steps to amend or expunge such information from the child care review service.</p> <p>(5) All child care review records must be retained in accordance with the requirements of section 428.10(a)(5) of this Title.</p>
		NY SSL, Title 4 of Article 6 §409-a (Preventive Services)
		<p>Preventive services information may be released by the department, social services district or other provider of preventive services to a person, agency or organization for purposes of a bona fide research project. Identifying information shall not be made available, however, unless it is absolutely essential to the research purpose and the department gives prior approval. Re-disclosure is not permitted except as otherwise permitted by law and upon the approval of the department.</p> <p>(a) Records relating to children shall be made available to officers and employees of the state or city comptroller or county performing the auditing function in any county for purposes of a duly authorized performance audit, provided, however that the officer has instituted procedures to limit access to client-identifiable information to persons requiring such information for purposes of the audit. Information pertaining to the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like information shall not be made available to such officers unless disclosure of such information is absolutely essential to the specific audit activity and the department gives prior written approval.</p> <p>(b) Any failure to maintain the confidentiality of information shall result in denial of any further access to records until the audit agency has reviewed its procedures concerning controls and has taken all appropriate steps to eliminate lapses in confidentiality. The department shall establish the grounds for denial of access to records contained and shall recommend a plan of remediation to the audit agency.</p>
		Confidentiality 18 NYCRR 423.7
629h(b)(1)(A)	Requires collaboration between courts and child welfare agencies to jointly plan for the collection and sharing of all	At the time of application for preventive services, the local social services district or other authorized agency shall notify the applicant for preventive services in writing of: funding of preventive services through public revenues;

	<p>relevant data and information.</p> <p>applicable statutes and regulations regarding the collection and disclosure of individual identifiable preventive services records; and service provider's procedures and practices for record maintenance and access to client specific records. All records established and maintained for applicants for and recipients of preventive services shall be confidential and shall be open to the inspection by only: NYS Department of Social Services; social services district; preventive service agency or an authorized agency providing services to the child or other family members; any person or entity upon an order of a court of competent jurisdiction; or any other person or entity providing or agreeing to provide services to the child or the child's family upon the execution of a written consent by child or child's parent. In addition, records relating to the provision of preventive services shall be available at any reasonable time to an employee or official of a Federal, State or local agency for the purpose of conducting a necessary fiscal audit. An agency or person given access to the names or other identifying information shall not divulge or make public the information except where authorized by a court or upon the execution of an appropriate written consent by a parent or a child in accordance with the provisions of subdivision (e) of this section.</p> <p>(e)A child with capacity to consent or a child's parent may execute a written consent authorizing the disclosure of client identifiable preventive services information to a person or entity providing or agreeing to provide services. A parent may consent to release of client identifiable preventive services information concerning the parent and the parent's family, including any children in family. A child may consent to release of client identifiable preventive services information about himself or herself where the child's parent is unavailable or lacks the capacity to consent and the child is determined to have capacity to consent. A consent authorizing disclosure of client identifiable information must satisfy the following procedural requirements. It must: Be in writing and voluntarily executed. Be dated and specify the entity to which disclosure is authorized, and whether or not redisclosure of the information is permitted. If redisclosure is permitted, any limitations on redisclosure must be specified. Specify what information may be disclosed. Identify the purpose of the disclosure and any limitations on the use of information by entity. Specify a time period during which the consent is to be effective or an expiration date. State that the person executing the consent may terminate his or her authorization at any time. Be given to the person who executed it. The capacity to consent means an individual's ability to understand the nature and consequence of a proposed action and to make an informed decision concerning that action.</p>
--	---

		A parent includes a natural parent, adoptive parent, stepparent, guardian, or caretaker with whom a child resides.
		Family Court Act §166 Privacy of Records
629h(b)(1)(A)	Requires collaboration between courts and child welfare agencies to jointly plan for the collection and sharing of all relevant data and information.	The records of any proceeding in the family court shall not be open to indiscriminate public inspection. However, the court in its discretion in any case may permit the inspection of any papers or records. Any duly authorized agency, association, society or institution to which a child is committed may cause an inspection of the record of investigation to be had and may in the discretion of the court obtain a copy of the whole or part of such record.
		Privacy of Family Court Records 22 NYCRR 205.5
629m	Provides information regarding data standardization for improved data matching.	<p>The following shall be permitted access to the pleadings, legal papers formally filed in a proceeding, findings, decisions and orders and, subject to the provisions of CPLR 8002, transcribed minutes of any hearing held in the proceeding:</p> <p>(a) the petitioner, presentment agency and adult respondent in the Family Court proceeding and their attorneys;</p> <p>(b) when a child is either a party to, or the child's custody may be affected by, the proceeding:</p> <p>(1) the parents or persons legally responsible for the care of that child and their attorneys;</p> <p>(2) the guardian, guardian ad litem and attorney for that child;</p> <p>(3) an authorized representative of the child protective agency involved in the proceeding or the probation service;</p> <p>(4) an agency to which custody has been granted by an order of the Family Court and its attorney;</p> <p>(5) an authorized employee or volunteer of a court appointed special advocate program appointed by the Family Court to assist in the child's case in accordance with Part 44 of this Title; and</p> <p>(c) a representative of the State Commission on Judicial Conduct, upon application to the appropriate Deputy Chief Administrator, or his or her designee, containing an affirmation that the commission is inquiring into a complaint under article 2-A of the Judiciary Law, and that the inquiry is subject to the confidentiality provisions of said article;</p> <p>(d) in proceedings under articles 4, 5, 6 and 8 of the Family Court Act in which temporary or final orders of protection have been issued:</p> <p>(1) where a related criminal action may, but has not yet been commenced, a prosecutor upon affirmation that such records are necessary to conduct an investigation of prosecution; and</p> <p>(2) where a related criminal action has been commenced, a prosecutor or defense attorney in accordance with procedures set forth in the Criminal Procedure Law provided, however, that prosecutors may request transcripts of Family Court proceedings in accordance with section 815 of the Family Court Act, and provided further that any records or information disclosed pursuant to this subdivision must be retained as confidential and may not be redisclosed except as necessary for such investigation or use in the criminal action; and</p> <p>(e) another court when necessary for a pending proceeding involving one or more parties or children who are or were the parties in, or subjects of, a proceeding in the Family Court pursuant to article 4, 5, 6, 8 or 10 of the Family Court Act. Only</p>

		certified copies of pleadings and orders in, as well as information regarding the status of, such Family Court proceeding may be transmitted without court order pursuant to this section. Any information or records disclosed pursuant to this subdivision may not be redisclosed except as necessary to the pending proceeding. Where the Family Court has authorized that the address of a party or child be kept confidential in accordance with Family Court Act, section 154-b(2), any record or document disclosed pursuant to this section shall have such address redacted or otherwise safeguarded.
Title IV-E of the Social Security Act 42 U.S.C. §670 et seq.		Confidentiality Policy and Procedures Manual 18 NYCRR 357.6
671(a)(4)	State plan must assure coordination between programs at the State and local levels with Federal programs, such as TANF, IV-B programs, and Medicaid.	
671(a)(8)	State plan must provide safeguards to restrict the use or disclosure of information concerning individuals assisted under this program for purposes directly connected with the administration of the state's plan approved under title IV-B or other Federal programs such as TANF, Child Support, Medicaid & SSI, as well as the administration of any other Federal or Federally-assisted program which provides cash or in-kind assistance or services directly to individuals on the basis of need.	The New York State Department of Social Services, local social services districts, and other authorized agencies shall disseminate to staff a policy and procedures manual establishing and describing: <ul style="list-style-type: none"> (a) responsibilities of staff to safeguard information pursuant to statute, regulation and policy; (b) procedures for properly informing clients of records collection, access, utilization and dissemination; (c) policies and practices relating to the safeguarding of confidential information by the agency; (d) procedures relating to employee access to information; and (e) (e) disciplinary actions for violations of confidentiality statutes, regulations and policies
Requirements Applicable to Administration on Children, Youth and Families, Foster Care Maintenance Payments, Adoption Assistance, and Child and Family Services for Safeguarding information for the Financial Assistance Programs 45 C.F.R. §205.50 and §1355.50 et seq.		N.Y. Social Services Law §372 Confidentiality of records; related matters
205.50(a)	State plan for Title IV-B and Title IV-E funded programs must include the following requirements:	
205.50(a)(1)(i)	Pursuant to state statute, imposing legal sanctions, the use or disclosure of information concerning applicants and recipients will be limited to the purposes directly connected with one or more of the following:	
205.50(a)(1)(i)(Administration of the State	

A)	approved plan under Title IV-A, or the State plan or program under Titles IV-B, IV-D, IV-E, or IV-F or under Titles I, X, XIV, XVI, XIX, or the SSI program established by Title XVI. Such purposes include establishing eligibility, determining the amount of assistance, and providing services for applicants and recipients.	
205.50(a)(1)(i)(C)	The administration of any other Federal or federally-assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need.	
205.50(a)(1)(i)(G)	The reporting, to appropriate agency or official, information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid.	
205.50(a)(2)(i)	In the state plan, Agency will have clearly defined criteria governing safeguarded information and conditions under which such information may be released or used.	<ol style="list-style-type: none"> 1. Every court, and public board, commission, institution, or officer with powers or duties in relation to abandoned, delinquent, destitute, neglected or dependent children who shall receive, accept or commit any child shall keep a record of all required information (described fully in this statute); shall report to the department on each such child placed out, or boarded out; and shall furnish such information to any authorized agency to which child shall be committed or otherwise given into custody. 2. Every charitable, eleemosynary, reformatory, or correctional institution, public or private, incorporated or unincorporated, and every agency, association, corporation, institution, society or other organization which shall receive, accept, or admit any child whether or not in receipt of payments from public funds for support shall keep a record (described fully in statute) and make reports to the department giving all required information together with such further information as department may require. Except as to children placed out, boarded out or surrendered or for whom guardianship is accepted or adoption provided, the requirement of this section shall not apply to hospitals, day nurseries, eleemosynary day schools, and summer and vacation homes and camps, or to institutions for the care of convalescent, anemic, under-nourished or cardiac children, preventoria, working boys' homes, emergency shelters and schools for the blind and for the deaf, but all such hospitals, homes and institutions shall keep records and report to the department as required.
205.50(a)(2)(i)(A)	Safeguarded information includes but is not limited to:	
205.50(a)(2)(i)(B)	Names and address of applicants or recipients and amounts of assistance provided.	
205.50(a)(2)(i)(C)	Information related to social and economic conditions or circumstances of particular individual including information obtained from any agency pursuant to 205.55 (requesting and furnishing eligibility and income information). Information obtained from IRS and Social Security Administration must be safeguarded in accordance with procedures set forth by those agencies.	

	<p>Agency evaluation of information about a particular individual.</p>	<ol style="list-style-type: none"> 3. Records maintained by department or an authorized agency are confidential (see also Civil Practice Laws and Rules, Article 31). When either subject foster child, or such child's parent, or such child's guardian if any, is not a party to the action, a copy of the notice or motion for discovery shall be served upon such parent, guardian, and child and, if the child is a minor, the child's law guardian. Such persons may appear in the action with regard to such discovery. Where no action is pending, upon application by a parent, relative or legal guardian of such child or by an authorized agency, after due notice to institution or authorized agency affected and hearing had thereon, the supreme court may by order direct officers to furnish to parent, relative, legal guardian or authorized agency extracts from record the court may deem proper. Department through its authorized agents and employees may examine at all reasonable times records required by this section to be kept. 4. (a) All such records relating to such children shall be open to the inspection of the board and the department at any reasonable time, and the information called for under this section and such other data as may be required by the department shall be reported to the department, in accordance with the regulations of the department. Such records kept by the department shall be deemed confidential and shall be safeguarded from coming to the knowledge of and from inspection or examination by any person other than one authorized, by the department, by a judge of the court of claims when such records are required for the trial of a claim or other proceeding in such court or by a justice of the supreme court, or by a judge of family court when such records are required for the trial of a proceeding, after a notice to all interested persons and a hearing, to receive such knowledge or to make such inspection or examination. No person shall divulge the information thus obtained without authorization by the department, or by such judge or justice. (b)(i) Notwithstanding any inconsistent provision of law to the contrary, records relating to children kept pursuant to this section shall be made available to officers and employees of the state comptroller or of the city comptroller of the city of New York, or of the county officer designated by law or charter to perform the auditing function in any county not wholly contained within a city, for the purposes of a duly authorized performance audit, provided that such comptroller shall have certified to the keeper of such records that he or she has instituted procedures developed in consultation with the department to limit access to client-identifiable information to persons requiring such information for purposes of the audit, that persons shall not use information in any way except for purposes of the audit and that appropriate controls and prohibitions are imposed on the dissemination of client-identifiable information obtained in the audit. Information pertaining to the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information shall not be made available to officers and
--	--	--

		<p>employees unless disclosure is absolutely essential to the specific audit activity and the department gives prior written approval. (ii) Any failure to maintain the confidentiality of client-identifiable information shall subject comptroller or officer to denial of any further access to records until such time as the audit agency has reviewed its procedures concerning controls and prohibitions imposed on the dissemination of information and has taken all reasonable and appropriate steps to eliminate such lapses in maintaining confidentiality to the satisfaction of the department. The department shall establish the grounds for denial of access to records contained under this section and recommend, as necessary, a plan of remediation to the audit agency. Except as provided in this section, nothing in this paragraph shall be construed as limiting the powers of such comptroller or officer to access records which he is otherwise authorized to audit or obtain under any other applicable provision of law. Any person given access to information pursuant to this paragraph who releases data or information to persons or agencies not authorized to receive information shall be guilty of a class A misdemeanor.</p> <ol style="list-style-type: none"> 5. a. Notwithstanding any provisions of law to the contrary, social services districts shall provide a written summary of services rendered to a child upon the request of a probation service conducting an investigation pursuant to the provisions of section 351.1 of the Family Court Act. Information provided to a probation service pursuant to provisions of this subdivision shall be maintained by such service according to the provisions of subdivision five of section 351.1 of the Family Court Act. b. Notwithstanding any other provision of law, foster care information may be released by the department or an authorized agency to a person, agency or organization for purposes of a bona fide research project. Identifying information shall not be made available, however, unless it is absolutely essential to the research purpose and department gives prior approval. Information released shall not be re-disclosed except as otherwise permitted by law and upon the approval of the department. 6. The requirements of this section to keep records and make reports shall not apply to the birth parent or parents, or relatives within the second degree of parents. 7. The provisions of this section as to records and reports to the department shall apply also to the placing out, adoption or boarding out of a child and the acceptance of guardianship or of surrender of a child. 8. An authorized agency (defined in paragraphs (a) and (b) of subdivision 10 of section 371) or any primary or secondary school or an office of the division for youth, except agencies operating pursuant to article nineteen-H of the executive law, who shall receive, accept, enroll or commit any child under such circumstances as shall reasonably indicate that such child may be a missing person shall make inquiries of each such child to the division of criminal justice services in a manner
--	--	---

		<p>prescribed by such division; provided that as used in this subdivision a court shall not be included within the definition of an authorized agency. If such child appears to match a child registered with the statewide central register for missing children (described in section 837-e of the executive law) or one registered with the national crime information center register, such agency shall immediately contact the local law enforcement agency.</p> <p>9. In any case where a child is to be placed with or discharged to a relative or other person legally responsible pursuant to section 1017 or 1055 of the Family Court Act, such relative or other person shall be provided with such information by an authorized agency as is provided to foster parents pursuant to this section and applicable regulations of the department.</p>
		<p>Basis for disclosure of information 18 NYCRR 357.3</p>
205.50(a)(2)(i)(D)	Medical data, including diagnosis and past history of disease or disability, concerning a particular individual.	<p>Disclosure of Medical Information</p> <p>Upon the transfer of a foster child to the care of another authorized agency, the former agency must provide to the receiving agency the child's comprehensive health history, both physical and mental, to the extent it is available.</p> <ul style="list-style-type: none"> • Comprehensive health history of the child and of his or her biological parents and the health care needs of the child must be provided by an authorized agency to foster parents at the time of the child's placement in foster care. In all cases, information identifying the biological parents must be removed from the comprehensive medical history. • Comprehensive health history, both physical and mental, of a child legally freed for adoption and of his or her biological parents must be provided by an authorized agency to the child's prospective adoptive parent(s). Prospective adoptive parent means an individual who meets criteria as defined in section 421.16 of this Title and who has indicated an interest in adopting a particular child, and for whom the authorized agency has begun the placement agreement process in accordance with section 421.18 of this Title. In the case of finalized adoptions, such information must be provided upon request to the child's adoptive parents. In all cases, information identifying the biological parents must be removed from the comprehensive health history. • Comprehensive health history, including both physical and mental, of the child in foster care and of his or her biological parents must be provided by an authorized agency at no cost to such child when discharged to his or her own care. Such information must include the names and addresses of the child's health care providers. • Comprehensive health history of a child in foster care must be provided to the child's parents or guardian when the child is discharged to their care, except that

confidential HIV-related information must not be disclosed without a written release from the child if the child has the capacity to consent as defined in section 360-8.1(a)(8) of this Title and in article 27-F of the Public Health Law. The conditions for the written release authorizing such disclosure are described in section 360- 8.1(a)(8) of this Title and in article 27-F of the Public Health Law. The term confidential HIV-related information is defined in section 360-8.1(a)(5) of this Title and in article 27-F of the Public Health Law.

- Comprehensive health history, both physical and mental, of any adopted former foster child and of his or her biological parents must be provided by an authorized agency to the adopted former foster child upon request. In all cases, information identifying the biological parents must be removed from the comprehensive health history.

For the purposes of this subdivision, the comprehensive health history must include, but is not limited to, conditions or diseases believed to be hereditary, where known; drugs or medication taken during pregnancy by the child's biological mother, where known; immunizations received by the child while in foster care and prior to placement in care, where known; medications dispensed to the child while in care and prior to placement in care, where known; allergies the child is known to have exhibited while in care and prior to placement in care, where known; diagnostic tests, including developmental or psychological tests and evaluations given to the child while in care and prior to placement in care, where known, and their results, laboratory tests for HIV, where known, and their results; and any follow-up treatment provided to the child prior to placement in care, where known, or provided to the child while in care, or still needed by the child.

Disclosure to applicant, recipient, or person acting in his behalf. The case record shall be available for examination at any reasonable time by the applicant or recipient or his authorized representative upon reasonable notice to the local district. The only exceptions to access are:

1. those materials to which access is governed by separate statutes, such as child welfare, foster care, adoption or child abuse or neglect or any records maintained for the purposes of the Child Care Review Service;
2. those materials being maintained separate from public assistance files for purposes of criminal prosecution and referral to the district attorney's office; and
3. the county attorney or welfare attorney's files.
 - a) Information may be released to a person, a public official, or another social agency from whom the applicant or recipient has requested a particular service when it may properly be assumed that the client has requested the inquirer to act in his behalf and when such information is related to the particular service requested.

1. Disclosure to relatives and other legally responsible

persons.

- a) To the extent available and upon request, an authorized agency must provide a relative or other legally responsible person with whom a child is placed, or to whom a child is discharged or released, by the family court pursuant to section 1017 or 1054 of the Family Court Act, but who is not a foster parent for the child, with the same background information regarding the child as is provided to a foster parent with whom a child is placed. Such information, as available, must include the child's medical history and any other information which is provided to a foster parent as necessary for the child's health, safety and welfare pursuant to this section, section 443.2 of this Title, and any other applicable regulations of the Office of Children and Family Services. However, if the child's medical history includes confidential HIV-related information, such information must not be provided to the relative or other legally responsible person without a written release from:
 - i. the child, if the child has capacity to consent as defined in section 360- 8.1(a)(8) of this Title and in article 27-F of the Public Health Law; or
 - ii. a person authorized to consent to health care for the child, if the child lacks capacity to consent.
- b) A social services district is required, under section 132 of the Social Services Law, to investigate the ability and willingness of relatives, and the liability of legally responsible relatives, to contribute to the support of an applicant for or recipient of public assistance or care. In regard to these investigations, such a relative is a person considered entitled, under section 136 of the Social Services Law, to necessary and appropriate information regarding the applicant or recipient. Information concerning the applicant's or recipient's needs and basic circumstances may be disclosed to such a relative to the extent necessary to discuss contributions of support from that relative. However, confidential HIV-related information may not be disclosed to such a relative without a written release from:
 - i. the applicant or recipient, if the applicant or recipient has capacity to consent as defined in section 360-8.1(a)(8) of this Title and in article 27-F of the Public Health Law; or
 - ii. from a person authorized to consent to health care for the applicant or recipient, if the applicant or recipient lacks capacity to consent.
- c) The social services district or other authorized agency must, in writing, inform the relative or other legally responsible person receiving information under this subdivision, of the confidential nature of the information and of any restrictions against redisclosure of such information. In the case of confidential HIV-related information, the warning statement against redisclosure set forth in section 360-8.1(h) of this Title and in article 27-F of the Public Health Law must be provided to the person receiving confidential HIV-

related information.

- d) The term confidential HIV-related information is defined in section 360- 8.1(a)(5) of this Title and in article 27-F of the Public Health Law. The conditions for the written release authorizing disclosure of such information are set forth in section 360-8.1(g) of this Title and in article 27-F of the Public Health Law.

2. Disclosure to Federal, State or local official.

- a) Information may be disclosed to any properly constituted authority. This includes a legislative body or committee upon proper legislative order, an administrative board charged with investigating or appraising the operation of public welfare, law enforcement officers, grand juries, probation and parole officers, government auditors, and members of public welfare boards, as well as the administrative staff of public welfare agencies.
- b) Information may be released to a selective service board when such information is necessary in order that the board may arrive at a valid and consistent decision regarding dependency.
- c) A social services official must disclose to a Federal, State or local law enforcement officer, upon request of the officer, the current address of any recipient of family assistance, or safety net assistance if the duties of the officer include the location or apprehension of the recipient and the officer furnishes the social services official with the name of the recipient and notifies the agency that such recipient is fleeing to avoid prosecution, custody or confinement after conviction, under the laws of the place from which the recipient is fleeing for a crime or an attempt to commit a crime which is a felony under the laws of the place from which the recipient is fleeing, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of that state, or is violating a condition of probation or parole imposed under a Federal or State law or has information that is necessary for the officer to conduct his or her official duties. In a request for disclosure pursuant to this paragraph, such law enforcement officer must endeavor to include identifying information to help ensure that the social services official discloses only the address of the person sought and not the address of a person with the same or similar name.
- d) Nothing in this Part precludes a social services official from reporting to an appropriate agency or official, including law enforcement agencies or officials, known or suspected instances of physical or mental injury, sexual abuse or exploitation, sexual contact with a minor or negligent treatment or maltreatment of a child of which the social services official becomes aware of in the administration of public assistance and care.
- e) Nothing in this Part precludes a social services official from communicating with the Federal Immigration and Naturalization Service regarding the immigration status of any individual.

3. Disclosure upon subpoena by court.

- a) When a public assistance record is subpoenaed by court, the public welfare agency shall immediately consult its legal counsel before producing any record or revealing any information or giving any testimony.
 - b) When the subpoena is for a purpose directly related to the administration of public assistance or protection of the child, the agency before complying with the subpoena shall endeavor to get in touch with the client whose record is involved or his attorney and secure permission to reveal the contents of the record which relate to the administration of public assistance.
 - c) In the event that the subpoena is for a purpose not directly related to the administration of public assistance or the protection of a child, the agency shall plead, in support of its request to withhold information, that the Social Security Act, the Social Services Law and the regulations of the State Department of Social Services prohibit disclosure of confidential information contained in records and files, including names of clients. The agency will be governed by the final order of the court after this plea is made.
4. Disclosure to bona fide news disseminating firm. The written assurance required by section 136 of the Social Services Law that the names and addresses of applicants and recipients of assistance shall not be published, shall be obtained by the public welfare official before allowing examination of records of disbursements by that bona fide news disseminating firm.
5. Disclosure of confidential HIV-related information.
- a) Notwithstanding any other provision of any law or regulation, confidential HIV-related information concerning persons claiming disability benefits under the provisions of titles II and XVI of the Social Security Act may be disclosed to persons employed by or acting on behalf of the department's office of disability determinations engaged in the conduct of processing such claims on the basis of a general medical release in the form approved by the Social Security Administration of the United States Department of Health and Human Services. The employees and agents of the office of disability determinations, including providers of clinical laboratory services, consultative medical examinations or claimant-related medical information, to the extent they have acted in accordance with department procedures and instructions, will be held harmless and indemnified by the department for any liability for the disclosure or redisclosure of any HIV-related information when such information is solicited by or provided to the office of disability determination.
 - b) All medical information, including confidential HIV-related information, solicited by or provided to the office of disability determinations for the purpose of determining a person's disability will be treated as confidential and this information must not be disclosed except as prescribed by the regulations of the Secretary of the United States Department of Health and Human Services.
 - c) The term confidential HIV-related information is defined in

		section 360-8.1 of this Title.
		Access to Foster Care Records by a Former Foster Child 18 NYCRR 428.8
		<p>(a) This section establishes the standards and process whereby a former foster child may receive access to foster care records from an authorized agency.</p> <p>(b) Definitions. As used in this section:</p> <ol style="list-style-type: none"> (1) Former foster child means a person 18 years of age or older, who has been discharged from foster care on either a trial or final basis and was not adopted. (2) Foster care record means the following: <ol style="list-style-type: none"> (i) health and medical records, including medical histories of the foster child and his or her birth parents, to the extent available, and in accordance with section 373-a of the Social Services Law and section 357.3 of this Title; (ii) educational records; (iii) social history, assessment and service plan and amendments in the form and manner required at the time such documents were completed, or which predate uniform case recording requirements; (iv) progress notes; (v) face sheet or equivalent, and any other documents which identify and describe family members, including but not limited to parents, guardians, siblings and half siblings, and grandparents; and (vi) placement information. (3) Authorized agency includes those entities defined in section 371(10)(a) and (b) of the Social Services Law. <p>(c) Authorized agency must grant a former foster child's request for access to his or her foster care record, subject to the provisions of this section. A former foster child is entitled to receive all items in the foster care record as that term is defined in paragraph (b)(2) of this section, except for confidential HIV-related information concerning any person other than the former foster child. The former foster child may gain access to child protective services information regarding the former foster child, including reports to the Statewide central register of child abuse and maltreatment in accordance with section 422 of the Social Services Law.</p> <p>(d) (d) Access by a former foster child to his or her foster care record must be granted in one of the following methods as chosen by the authorized agency:</p> <ol style="list-style-type: none"> (1) a summary statement containing the requested information; (f) copy of the entire foster care record; (g) a copy of the portions of the record containing the requested

		<p>information;</p> <p>(h) a personal review of the applicable records by the former foster child within the agency facility, when mutually convenient to the authorized agency and the former foster child; or</p> <p>(i) any combination of the above.</p> <p>(j) The former foster child must submit a written request detailing the specific information sought and include a copy of a document verifying the identity of the former foster child such as a current valid driver's license or other commonly accepted form of identification which provides proof of the name and date of birth of the former foster child. Nothing precludes the former foster child from requesting all available agency foster care records that pertain to the former foster child.</p> <p>(k) Upon the receipt by an authorized agency of a written request from a former foster child for information concerning the former foster child, the authorized agency must verify the identity and age of the former foster child by reviewing the submitted identification documentation; the authorized agency must search its foster care records to determine whether a foster care record exists for such a person.</p> <p>(l) Within 30 days of the receipt of the written request, the authorized agency must provide the former foster child with the requested information or a written explanation of the delay including the date the information will be provided.</p> <p>(m) An authorized agency may impose reasonable and customary charges, not to exceed the actual costs incurred by the authorized agency, for making copies of and/or mailing case record documents. No charge may be imposed for providing personal review of the records or preparing a summary.</p>
205.50(a)(2)(ii)	Release or use of information concerning individuals is restricted to persons or agency representative Release or use of information concerning individuals is restricted to persons or agency representatives who is subject to standards of confidentiality which are comparable to those of agency administering Title IV-E or Title IV-E programs who is subject to standards of confidentiality which are comparable to those of agency administering Title IV-E or Title IV-E programs.	<p>(a) Information shall be released to another agency or person only when the public welfare official providing such data is assured that:</p> <p>(1) the confidential character of the information will be maintained;</p> <p>(2) the information will be used for the purposes for which it is made available, such purposes to be reasonably related to the purposes of the public welfare program and the function of the inquiring agency; and</p> <p>(3) the information will not be used for commercial or political purposes.</p>
		Standards for Access to and Disclosure of Confidential HIV-Related Information for Children in Foster Care 18 NYCRR 431.7
		<p>(a) Staff of an authorized agency as defined by paragraphs (a) and (b) of section 371(10) of the Social Services Law must comply with the following standards relating to access to and disclosure of</p>

confidential HIV related information.

(1) Each authorized agency is responsible for formulating a written management plan to ensure that required safeguards are implemented and enforced to restrict the disclosure of confidential HIV related information concerning children in its care. This management plan must be available for review by the department and must include:

(i) procedures consistent with section 2782.6 of the Public Health Law to ensure that documents containing confidential HIV related information are accessible only to an authorized employee or agent of the authorized agency when disclosure is reasonably necessary for the supervision, monitoring, administration or provision of services provided by such agencies. For the purpose of this section, an authorized employee or agent means an employee or agent who, in the ordinary course of business of the authorized agency, has access to records relating to the care of, treatment of, or provision of services to the person; and

(ii) measures to ensure that confidential HIV related information stored electronically is protected from access by unauthorized persons; and

(iii) a plan for training agency staff regarding HIV infection, confidentiality of HIV related information, and protection of persons at significant risk in accordance with subdivision (c) of this section.

(2) Such authorized employees or agents must be provided with a written statement warning of penalties for unauthorized disclosure as follows: "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. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure."

(3) Redislosure of confidential HIV related information by an authorized agency is not permitted echild care review service except in a manner consistent with article 27-F of the Public Health Law, section 373-a of the Social Services Law and section 357.3(b) of this Title.

(4) Confidential HIV related information included in the child's health history must be provided to:

(i) another authorized agency to whom the care of the child is transferred;

(ii) the foster parents who have responsibility for the child's care;

(iii) the prospective adoptive parents as defined in section 421.1 of this Title or adoptive parents of the child;

(iv) the biological parents when the child is discharged to such parents and such disclosure is authorized by section 2782 of the Public Health Law;

(v) a child discharged to his or her own care.

(5) Confidential HIV related information is defined in section 360-8.1 of this Title.

(b)

(1) Foster parents may redisclose confidential HIV-related information concerning a foster child boarded out or placed with such parents to persons or entities other than those set forth in

article 27-F of the Public Health Law only:

(i) when redisclosure is for the purpose of providing care, treatment or supervision of the foster child; or
(ii) upon specific written authorization signed by the commissioner of the social services district or such commissioner's designated representative in accordance with article 27-F of the Public Health Law. Such authorization must be maintained in the child's uniform case record.

(2) Any disclosure of confidential HIV-related information by a foster parent, echild care review service except as authorized by article 27-F of the Public Health Law, must be accompanied by a statement in writing which includes the following or substantially similar language:

"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. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure."

(c) Training of Staff. Each authorized responsible for the care of HIV infected children, and for maintaining the confidentiality of records for such children, must provide initial training within 90 days of promulgation of these regulations, and thereafter at least annually, to all staff persons authorized to have access to any files and records, written or electronic, containing information on HIV infected children. As new staff with such access are added to agency personnel, initial training must be provided within 45 days of employment. Such training must include, but is not limited to:
(1) a review of State law and department regulations related to confidentiality of HIV information, including, but not limited to:
(i) the necessity for written authorization for redisclosure on a case by case assessment;
(ii) the list of specific persons to whom HIV related information in the child's health history must be provided in accordance with Social Services Law 373-a and Section 357.3(b) of this Title; and
(iii) the provision of the required warning statement of penalties for redisclosure in accordance with section 405.3(g)(16) of this Title.

(2) a review of the agency's written management plan for maintaining security of records;

(3) information on factors which constitute significant risk of contracting or transmitting HIV infection as defined by the State Department of Health regulations 10 NYCRR Part 63.9. Such factors include the presence of significant risk body substances, principally blood and semen, and the circumstances which result in transmission of such substances;

(4) hygienic measure recommended for the protection of persons caring for an HIV infected child and for protection of HIV infected children from unnecessary echild care review service posure to additional infections. Such measures include:

(i) standard accepted practices for cleanliness and infection control;

(ii) the use of preventive barriers where indicated, specifically if

		<p>the caretaker's skin has open wounds or abrasions, or if there is presence of blood; and</p> <p>(5) current research information concerning HIV infection which includes, but is not limited to, the evidence that HIV disease is not transmitted by casual or in ordinary home and family care of children.</p> <p>(d) Law guardian. When requested by a law guardian, an authorized agency must disclose confidential HIV-related information concerning a foster child to the law guardian if the law guardian is appointed to represent the foster child pursuant to the Social Services Law or the Family Court Act and the information is for the purpose of representing the foster child. A law guardian appointed to represent a child may redisclose confidential HIV-related information only with the consent of the child if the child has capacity to consent. If the child lacks capacity to consent, the law guardian may redisclose confidential HIV-related information for the sole purpose of representing the child.</p>	
205.50(a)(2)(iii)	Except in an emergency, family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In emergency situation when consent for release of information cannot be obtained, individual will be notified immediately.		
		18 NYCRR	
1355.53(b)(8)	Child welfare system must ensure confidentiality and security of information and system.	18 NYCRR 357.6 Confidentiality Policy and Procedures Manual	<p>The New York State Department of Social Services, local social services districts, and other authorized agencies shall disseminate to staff a policy and procedures manual establishing and describing:</p> <p>(a) responsibilities of staff to safeguard information pursuant to statute, regulation and policy;</p> <p>(b) procedures for properly informing clients of records collection, access, utilization and dissemination;</p> <p>(c) policies and practices relating to the safeguarding of confidential information by the agency;</p> <p>(d) procedures relating to employee access to information; and</p> <p>(e) disciplinary actions for violations of confidentiality statutes, regulations and policies.</p>
1357.15(m)	States must provide a full range of integrated child and family services providing social, health, education, economic services, mental health, substance abuse, developmental disabilities, and	18 NYCRR 465.1 Confidentiality and Access of information in the Child Care Review Service	<p>(a) The use and disclosure of all information received for applicants for and recipients of foster care, preventive services and child protective services as a result of an indicated report of child abuse and maltreatment through the child care review service shall be subject to Parts 357, 423 and 432 of this</p>

	housing services.	<p>Title. Any person, firm, corporation or association contracted by the department for the child care review service shall safeguard the confidentiality of information received or maintained by the service in the same manner, and will remain subject to the same confidentiality requirements of Parts 357, 423 and 432 of this Title.</p> <p>(1) Disclosure of information to authorized agencies and individuals.</p> <p>(i) The child care review service will issue individual identifiable information only to representatives of the State Department of Social Services, the local social services district responsible for the child, and any authorized agency as defined in subdivision 10 of section 371 of the Social Services Law providing services and care to the child and, in accordance with provisions below, the child or his representative.</p> <p>(ii) Information identifiable by caseload or by social worker will only be made available by the child care review service to the authorized agency employing the worker, the local social services district purchasing care and service, and the State Department of Social Services.</p> <p>(iii) Information not identifying children, families or caseworkers including aggregate information which may identify local social services districts and voluntary agencies will be public information.</p> <p>(iv) Except for recurring aggregate reports the child care review service will notify public and voluntary agencies of the public release of information specifically identifying their agency.</p> <p>(2) Safeguards for the disclosure of information to authorized agencies and individuals.</p> <p>(i) Information shall be released to authorized agencies and individuals only when the public welfare official providing such data is assured that:</p> <p>(a) the confidential character of the information will be maintained;</p> <p>(b) the information will be used for the purposes for which it is made available, such purposes to be reasonably related to the purposes of the public welfare program and the functioning of the inquiring agency;</p> <p>(c) the information will not be used for commercial or political purposes.</p> <p>(ii) The child care review service shall be notified of any use made of child and/or family specific information generated by the child care review service.</p>
--	-------------------	---

		<p>(iii) Those agencies receiving individual identifying information from the child care review service shall designate a security officer responsible for assuring the maintenance of the confidentiality of said information.</p> <p>(iv) Those individuals who fail to take reasonable security precautions resulting in the unlawful disclosure of confidential information shall be guilty of a misdemeanor.</p> <p>(3) Disclosure of information to the child or representative.</p> <p>(i) Subject to the provisions of Parts 357, 423 and 432 of this Title, any child, his guardian, attorney parent or next of kin shall be provided an opportunity to review information on file with the child care review service pertaining to such child or family.</p> <p>(ii) Requests to review information on file with the child care review service shall be made to the State director of the child care review service. Denial of such request to review information shall be made in writing stating the reason or reasons therefore.</p> <p>(4) Requests for amendment or expungement of information.</p> <p>(i) Any child or his guardian, attorney, parent, or next of kin may request that any information on file with the child care review service be amended or expunged.</p> <p>(ii) Requests for amendment or expungement of information shall be addressed to the director of the child care review service. Within 30 days of the request, the director of the child care review service or his representative shall review the appropriateness of the request, and if in agreement, take appropriate steps to amend or expunge such information from the child care review service.</p> <p>(5) All child care review records must be retained in accordance with the requirements of section 428.10(a)(5) of this Title.</p>	
Title XX of the Social Security Act 42 U.S.C. §1397 et seq.			
1397f(b)(1)	State may use flexible funding in order to prevent and remedy the neglect and abuse of children by making grants to, or entering into contracts with, entities to provide residential or non-residential drug and alcohol prevention		

	and treatment programs providing comprehensive services for pregnant women and mothers and their children.		
1397j-1(a)	HHS shall ensure the protection of individual health privacy consistent with HIPAA regulations and applicable State and local privacy regulations.		
Child and Family Services Improvement and Innovation Act 42 U.S.C. §1305, et seq. (amending Social Security Act provisions for child abuse and child welfare funding)			
622(b)(15)(A)(v)	State must develop protocols for the appropriate use and monitoring of psychotropic medications and plan for ongoing oversight and coordination of health care services for foster children, including mental health, in coordination with state Medicaid agency, pediatricians, other health care experts, and child welfare experts. Must include oversight of prescription drugs, and procedures for the agency's active involvement of physicians and other professionals in assessing the health and well-being of children in foster care in determining appropriate medical treatment for the children.		
622(b)(18)	Description of activities that State has undertaken to address the developmental needs of children who have not attained 5 years of age.		
640(a)(3)(A) and (B)	Data must be interoperable and incorporate interoperable standards developed and maintained by intergovernmental partnerships, such as the National Information Exchange Model (NIEM).		
675(1)(G)(9) and (ii)(I)	Requires written educational stability plan for each child in foster care. Assures that foster	18 NCYRR 455.1 School District	a) Whenever a child in foster family care or an agency boarding home or group home who is a public charge on a social services

	<p>care placement takes into account the appropriateness of current educational setting and proximity to school where child is enrolled at the time of placement. Need to coordinate with appropriate local educational agencies to ensure that child remains in the school in which he is enrolled at the time of placement unless contrary to child's best interest. Child must be provided immediate and appropriate enrollment in new school with all educational records supplied to school. Educational stability planning applies to each child's initial placement in foster care as well as any subsequent placements during the child's stay in foster care.</p>	<p>Notification of a Foster Child Placed in a Foster Boarding Home, Agency Boarding Home, or Group Home</p>	<p>district is admitted to the schools of a school district in which the foster family home, agency boarding home or group home is located, whether upon initial enrollment in school or upon the subsequent removal of such child to another school district, the local social services commissioner or any voluntary authorized agency acting on his behalf in boarding out such child, shall transmit to the superintendent or equivalent school officer of the school district within 10 days of admission, the following information in writing:</p> <ol style="list-style-type: none"> (1) the name of such child; (2) the names and address of the foster parents or, where applicable, the name of the child-care agency and the address of the agency boarding home or group home; (3) the name and location of the school district in which such child resided at the time he became a public charge in foster care; (4) the name and location of the school last attended by such child prior to his current admission; and (5) the name and location of the local social services commissioner caring for such child, and the name and location of any voluntary authorized agency acting on his behalf. <p>(b) In addition to the notification specified in subdivision (a) of this section, the local social services commissioner or voluntary authorized agency acting on his behalf shall transmit to the superintendent or equivalent school officer of the school district in which the child resided at the time he became a public charge in foster care, within 10 days of the child's admission to the school district, the following information in writing:</p> <ol style="list-style-type: none"> (1) the name of such child; (2) the date when such child became a public charge in foster care, and his address at such time; (3) the date of birth of such child, if ascertainable, or his apparent age; and (4) the name and location of the school district in which such child is admitted. <p>(c) The provisions of this section are not applicable with respect to the school admission of any child who had been in foster family care as a public charge since prior to January 1, 1974 and whose tuition and cost of instruction had been borne by the social services district responsible for</p>
--	--	---	---

			<p>the care and maintenance of such child. The information obtained by a school district pursuant to this Part shall be deemed privileged and confidential, shall be used only for the limited purpose of properly establishing the responsibility of a school district for the cost of instruction and tuition of a child who is a public charge in foster care pursuant to section 3202 of Education Law, and shall not be disclosed by the school district or any employee thereof for any other purpose. The school district shall undertake to safeguard the confidentiality of such information as may be required by the department or the Education Department.</p>
1320a(3)	State can establish a program to identify and address domestic violence when that domestic violence endangers children and results in their foster care placement or permits Title IV-E foster care maintenance payments for a child in long-term therapeutic family treatment center (with parent(s)).	18 NYCRR 357.3 Basis for disclosure of information	<p>(i) Disclosure of domestic violence related information.</p> <p>(b) Information with respect to victims of domestic violence collected as a result of procedures for domestic violence screening, assessment, referrals and waivers pursuant to Part 351 of this Title shall not be released to any outside party or parties or other government agencies unless the information is required to be disclosed by law, or unless authorized in writing by the public assistance applicant or recipient.</p> <p>(c) Employees of the office, social services district or any agency providing domestic violence liaison services, consistent with applicable statute and regulation, may have access to client identifiable information maintained by a domestic violence liaison or by the welfare management system only when the employees' specific job responsibilities cannot be accomplished without access to client identifiable information.</p> <p>(d) Each social service district and agency providing domestic violence liaison services, with access to the welfare management system, must develop and implement policies and practices to ensure the maintenance of confidential individual information.</p>
1320(a)(7)(A)-(L)	Ten child welfare program improvement policies, including:		

	<p>(1) Develop and implement a plan to meet health and mental health needs of infants, children, and youth who are in foster care which ensures child-specific provision of comprehensive, appropriate, and consistent health and mental health services.</p> <p>(2) Establish one or more of the following programs designed to prevent infants, children and youth from entering foster care or to provide permanency for infants, children and youth in foster care:</p> <ul style="list-style-type: none"> a. Family counseling; b. Comprehensive family-based substance abuse treatment program; <p>Program to identify and address domestic violence when domestic violence poses a danger to infants, children and youth and puts them at risk of entering foster care.</p>		
Fostering Connections to Success and Increasing Adoptions Act of 2008 (amending Title IV-B and Title IVE)			
Section 102, amending 42 USC §627	Grants for residential family treatment programs of not less than six months enabling parents and their children to live in a safe environment of not less than 6 months and provide, on-site or by referral, substance abuse treatment		

	services, children's early intervention services, family counseling, medical and mental health treatment services, nursery and pre-school, and other services are comprehensive and support the family.		
Section 202, amending 42 USC §675(5)(G)	During the 90-day period immediately prior to the date on which the child will attain 18 years of age, or such greater age as the State may elect under this Act, provide child, through case management services, with assistance and support in developing a transition plan that is detailed and personalized at the direction of the youth, including specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services.		
Section 204, amending 42 USC §675(1)(G)	Plan for ensuring education stability of the child while in foster care, including that the placement takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement, that child welfare state agency has coordinated with appropriate local educational agencies for the child remains in the school in which the child is enrolled at the time of placement or, if remaining in such school is not in the best interests of the child, assurances by the state agency and local educational agency provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.		
Section 205, amending 42 USC §622(b)(15)(A)	State will develop between child welfare agency and the agency responsible for administering the Medicaid State plan under Title XIX	18 NYCRR 357.3 Basis for disclosure of information	(j) Disclosure of education information. To the extent available, an authorized agency must provide a copy of a foster child's education record at no cost to the child when

	<p>and in consultation with pediatricians, other health care experts, and experts in and recipients of child welfare services, a plan for the ongoing oversight and coordination of health care services for any child in foster care placement, which shall ensure a coordinated strategy to identify and respond to the health, mental health, and dental health care needs of this population. Plan shall include an outline of:</p> <ol style="list-style-type: none"> (1) Schedule for initial and follow health screenings that meet reasonable standards of medical practice; (2) Procedure for monitoring and treating health needs identified through screenings; (3) Plan for medical information to be updated and appropriately shared, including the development and implementation of an electronic health record; (4) Steps to ensure continuity of health care services, including the establishment of a medical home for every child in foster care; (5) Oversight of psychotropic medications for children in foster care; and (6) Procedure for state to actively consult with and involve physicians or other appropriate medical or non-medical professionals to assess health and 		<p>such foster child is discharged to his or her own care. For the purposes of this subdivision, the education record of a foster child includes the names and addresses of the child's educational providers; the child's grade level performance; assurances that the child's placement in foster care took into account proximity to the school in which the child was enrolled at the time of placement; and any other relevant education information concerning the child</p>
--	--	--	--

	well-being of children in foster care and determine appropriate medical treatment.		
Section 420, amending 42 USC §673(c)(1)(B)	State has determined that there exists with respect to the child a specific factor or condition (e.g., ethnicity, age, membership in a minority or sibling group, or the presence of factors such as a medical condition(s) or physical, mental or emotional handicaps) because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing Adoption Assistance and Medicaid under Title XIX.		
Child Abuse Prevention and Treatment and Adoption Reform 42 U.S.C. §5101 et seq.			
5104(c)(1)(B)	Discusses consulting with the head of each agency involved with child abuse and neglect and the mechanisms for sharing information among other federal agencies for case management of clearinghouse.		
5106a(b)(2)(B)(viii)	State must have methods to preserve the confidentiality of all records to protect the rights of child and parents or guardians.		
5106a(b)(2)(B)(ix)	State must disclose confidential information to any Federal, state or local government entity or any agency of such entity with a need for such information to carry out its responsibilities to protect children from child abuse and neglect.		
Statewide Automated Child Welfare Information Systems (SACWIS) 45 C.F.R. §1355 et seq.			
1352(a)(2) & (3)	To the extent practicable, interface with state's data collection system for child abuse and neglect and for the interface with and retrieval of information from the state automated information system		

	that collects information relating to TANF eligibility.		
1353(b)(2)(i), (ii), (iii) & (iv)	Provide for electronic exchanges and referrals, as appropriate, with other listed systems within the state (e.g., TANF, National Child Abuse and Neglect Data Systems (NCANDS), child support and enforcement, Medicaid) unless such electronic exchanges would not be practicable because of systems' limitations or cost constraints.		
1353(d)	Provide for interface with other automated information systems as appropriate, including but not limited to accounting and licensing systems, court and juvenile justice systems, vital statistics, and education.		
1355.20(a)	Voluntary national data collection and analysis system established by the ACF in response to requirements in CAPTA.		
1355.53(b)(2)	As a condition of funding, child welfare system must provide for effective management, tracking, and reporting through procedures and processes for electronic exchanges and referrals, as appropriate, with State TANF, child support enforcement, and Medicaid systems.		
1355.53(d)	As appropriate, the system may also provide for interface with other automated information systems, including but not limited to juvenile justice, vital statistics, and education.		
Guidance & Reference			
Children's Bureau website under SACWIS Overview	If a State elects to implement a SACWIS, the system is expected to be a comprehensive automated case management tool that meets the needs of all staff. By law, a SACWIS is required to support the reporting of data to the Adoption and Foster Care Analysis System		

	(AFCARS) and the National Child Abuse and Neglect Data System (NCANDS). Furthermore, a SACWIS is expected to have bi-directional interfaces with a State's Title IV-A (Temporary Assistance for Needy Families), Title XIX (Medicaid), and Title IV-D (Child Support) systems.		
--	--	--	--

**NYC Family Court Act
§ 1089
Permanency Hearings**

(c) Content of the permanency hearing report. The permanency hearing report shall include, but need not be limited to, up-to-date and accurate information regarding: (1) the child's current permanency goal, which may be: (i) return to the parent or parents; (ii) placement for adoption with the local social services official filing a petition for termination of parental rights; (iii) referral for legal guardianship; (iv) permanent placement with a fit and willing relative; or (v) placement in another planned permanent living arrangement that includes a significant connection to an adult who is willing to be a permanency resource for the child, including documentation of the compelling reason for determining that it would not be in the best interests of the child to be returned home, placed for adoption, placed with a legal guardian, or placed with a fit and willing relative;

(2) the health, well-being, and status of the child since the last hearing including: (i) a description of the child's health and well-being; (ii) information regarding the child's current placement; (iii) an update on the educational and other progress the child has made since the last hearing including a description of the steps that have been taken by the local social services district or agency to enable prompt delivery of appropriate educational and vocational services to the child, including, but not be limited to: (A) where the child is subject to article sixty-five of the education law or elects to participate in an educational program leading to a high school diploma, the steps that the local social services district or agency has taken to promptly enable the child to be enrolled or to continue enrollment in an appropriate school or educational program leading to a high school diploma; (B) where the child is eligible to be enrolled in a pre-kindergarten program pursuant to section thirty-six hundred two-e of the education law, the steps that the local social services district or agency has taken to promptly enable the child to be enrolled in an appropriate pre-kindergarten program, if available; (C) where the child is under three years of age and is involved in an indicated case of child abuse or neglect, or where the local social services district suspects that the child may have a disability as defined in subdivision five of section twenty-five hundred forty-one of the public health law or if the child has been found eligible to receive early intervention or special educational services prior to or during the foster care placement, in accordance with title 2-A of article 25 of the public health law or article 89 of the education law, the steps that the local social services district or agency has taken to make any necessary referrals of the child for early intervention, pre-school special educational or special educational evaluations or services, as appropriate, and any available information regarding any evaluations and services which are being provided or are scheduled to be provided in accordance with applicable law; and (D) where the child is at least sixteen and not subject to article 65 of the education law and elects not to participate in an educational program leading to a high school diploma, the steps that the local social services district has taken to assist the child to become gainfully employed or enrolled in a vocational program; (iv) a description of the visitation plan or plans describing the persons with whom the child visits, including any siblings, and the frequency, duration and quality of the visits; (v) where a child has attained the age of fourteen, a description of the services and assistance that are being provided to enable the child to learn independent living skills; and (vi) a description of any other services being provided to the child;

(3) the status of the parent, including: (i) the services that have been offered to the parent to enable the child to safely return home; (ii) the steps the parent has taken to use the services; (iii) any barriers encountered to the delivery of such services; (iv) the progress the parent has made toward reunification; and (v) a description of any other steps the parent has taken to comply with and achieve the permanency plan, if applicable.

(4) a description of the reasonable efforts to achieve the child's permanency plan that have been taken by the local social services district or agency since the last hearing. The description shall include: (i) unless the child is freed for adoption or there has been a determination by a court that such efforts are not required pursuant to section one thousand thirty-nine-b of this act, the reasonable efforts that have been made by the local social services district or agency to eliminate the need for placement of the child and to enable the child to safely return home, including a description of any services that have been provided; (ii) where the permanency plan is adoption, guardianship, placement with a fit and willing relative or another planned permanent living arrangement other than return to parent, the reasonable efforts that have

been made by the local social services district or agency to make and finalize such alternate permanent placement, including a description of any services that have been provided and a description of the consideration of appropriate in-state and out-of-state placements; (iii) where return home of the child is not likely, the reasonable efforts that have been made by the local social services district or agency to evaluate and plan for another permanent plan, including consideration of appropriate in-state and out-of-state placements, and any steps taken to further a permanent plan other than return to the child's parent; or (iv) where a child has been freed for adoption, a description of the reasonable efforts that will be taken to facilitate the adoption of the child; and

(5) the recommended permanency plan including: (i) a recommendation regarding whether the child's current permanency goal should be continued or modified, the reasons therefore, and the anticipated date for meeting the goal; (ii) a recommendation regarding whether the child's placement should be extended and the reasons for the recommendation; (iii) any proposed changes in the child's current placement, trial discharge or discharge that may occur before the next permanency hearing; (iv) a description of the steps that will be taken by the local social services district or agency to continue to enable prompt delivery of appropriate educational and vocational services to the child in his or her current placement and during any potential change in the child's foster care placement, during any trial discharge, and after discharge of the child in accordance with the plans for the child's placement until the next permanency hearing; (v) whether any modification to the visitation plan or plans is recommended and the reasons therefore; (vi) where a child has attained the age of fourteen or will attain the age of fourteen before the next permanency hearing, a description of the services and assistance that will be provided to enable the child to learn independent living skills; (vii) where a child has been placed outside this state, whether the out-of-state placement continues to be appropriate, necessary and in the best interests of the child; (viii) where return home of the child is not likely, the efforts that will be made to evaluate or plan for another permanent plan, including consideration of appropriate in-state and out-of-state placements; and (ix) in the case of a child who has been freed for adoption: (A) a description of services and assistance that will be provided to the child and the prospective adoptive parent to expedite the adoption of the child; (B) information regarding the child's eligibility for adoption subsidy pursuant to title 9 of article 6 of the social services law; and (C) if the child is over age fourteen and has voluntarily withheld his or her consent to an adoption, the facts and circumstances regarding the child's decision to withhold consent and the reasons therefore.