

COUNTY OF LIVINGSTON

PRIVACY POLICIES AND PROCEDURES F O R T H E HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 "HIPAA"

October 2017

Table of Contents

INTRODUCTION	1
POLICIES AND PROCEDURES	1
I. DESIGNATIONS	1
A. Hybrid Entity	1
B. Health Care Components	1
C. Officers	2
II. NOTICE OF PRIVACY PRACTICES	2
A. Content of Notice	2
B. Provision of Notice.....	3
C. Documentation	3
III. USES AND DISCLOSURES NOT REQUIRING AUTHORIZATION	4
A. Generally	4
B. Required Uses and Disclosures Not Requiring Authorization	4
i. To the individual	4
ii. When required by the Secretary of HHS.....	4
C. Permitted Uses and Disclosures Not Requiring Authorization	4
i. For treatment, payment or health care operations	4
ii. As required by law	5
iii. Public health activities	6
iv. Abuse, neglect or domestic violence.....	7
v. Health oversight activities.....	7
vi. Judicial and administrative proceedings.....	8
vii. Law enforcement purposes.....	8
viii. Coroners, medical examiners, and funeral directors.....	8
ix. Cadaveric organ, eye or tissue donation purposes.....	9
x. Research	9
xi. Averting serious threat to health or safety.....	9
xii. Specialized government functions.....	9
xiii. Workers' compensation.....	9
D. Verifying Identity of Authorized Person.....	9
E. Disclosure Log.....	9
IV. USES AND DISCLOSURES REQUIRING AUTHORIZATION	10
A. Generally.....	10
i. Psychotherapy notes.....	10
ii. Marketing.....	10
iii. Sale of PHI	10
iv. Use and disclosure within the scope of authorization.....	10
B. Core Elements and Requirements for a Valid Authorization.....	10
C. Defective Authorizations.....	11

D. Compound Authorizations	11
E. Prohibition on Conditioning Authorizations	11
F. Revocation of Authorizations	12
G. Documentation	12
V. USES AND DISCLOSURES REQUIRING AN OPPORTUNITY FOR THE INDIVIDUAL TO AGREE OR OBJECT	12
A. Generally.....	12
B. Use and Disclosure for Directory Purposes	12
C. Use and Disclosure for Involvement in the Individual's Care and Notification.....	12
VI. MINIMUM NECESSARY USE, DISCLOSURE AND REQUEST FOR PHI	14
VII. RIGHTS OF INDIVIDUALS	14
A. Request for Privacy Protection of PHI.....	14
B. Request for Access to PHI	15
C. Request for Amendment of PHI.....	18
D. Request for an Accounting of Disclosures of PHI.....	20
VIII. BUSINESS ASSOCIATES.....	22
IX. TRAINING.....	24
X. SAFEGUARDING PHI	24
XI. COMPLAINTS	24
XII. DISCIPLINARY ACTION.....	25
XIII. MITIGATION.....	25
XIV. RETALIATION AND WAIVER	25
XV. DOCUMENTATION AND RETENTION.....	25
XVI. DATA BREACH NOTIFICATION.....	26
A. Breach Defined.....	26
B. Suspected Breach.....	26
C. Notification to Individuals	27
D. Notification to the Media	28
E. Notification to the Secretary.....	28
F. Business Associates.....	29
G. Law Enforcement Delay.....	29

INTRODUCTION

In 1996, Congress enacted the Health Insurance Portability and Accountability Act (“HIPAA”) to improve the efficiency and effectiveness of the health care system. HIPAA authorized the United States Department of Health and Human Services (“HHS”) to adopt national standards designed to ensure the security and privacy of individuals’ health information. As required by HIPAA, HHS issued the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Rule”) and the Security Standards for the Protection of Electronic Protected Health Information (the “Security Rule”). The Privacy Rule established national standards for the use and disclosure of individually identifiable health information-called “protected health information” or “PHI”, as well as standards for individuals’ privacy rights to understand and control how their health information is used. The Security Rule established a national set of security standards for protecting certain health information that is held or transferred in electronic form. HIPAA and the Privacy and Security Rules were updated in 2009 under the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) and again in 2013 under the Omnibus Rule. HIPAA, the Privacy and Security Rules, HITECH Act and the Omnibus Rule are collectively referred to as the HIPAA Rules.

Protected health information is information, including demographic data that relates to an individual’s past, present or future physical or mental health or condition, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and identifies the individual.

In fulfilling the various functions and missions of the County of Livingston, State of New York (the “County”), County departments come into possession of, use and disclose PHI. The County is committed to compliance with all applicable laws and regulations including, but not limited to, the HIPAA Rules. Except for when otherwise notes, the terms herein shall have the same meaning as they do in the HIPAA Rules.

POLICIES AND PROCEDURES

I. DESIGNATIONS

A. Hybrid Entity. County activities include both HIPAA covered and non-covered functions. Accordingly, the County shall be designated a “Hybrid Entity” so that it may more effectively and efficiently administer these policies and procedures in compliance with the HIPAA Rules. The County shall have a designated Compliance Officer, HIPAA Privacy Officer and HIPAA Security Officer.

B. Health Care Components. The County Board of Supervisors shall designate by resolution the County departments that shall be its health care components. Such designations may be amended from time to time. The head of each designated health care component, or their designee, shall be responsible for administration of these policies and procedures.

C. Officers.

i. The HIPAA Privacy Officer shall oversee compliance with the Privacy Rule and shall be responsible for coordinating, developing, approving and assisting the County Compliance Committee in overseeing and monitoring the privacy of PHI and implementing policies, standards, and guidelines, including minimum requirements, that provide adequate privacy of PHI for all County health care components, and responding to actual or suspected breaches in confidentiality or integrity of PHI.

ii. The HIPAA Security Officer shall oversee compliance with the Security Rule and shall be responsible for coordinating, developing, approving and assisting the County Compliance Committee in overseeing and monitoring the security of PHI and implementing policies, standards, and guidelines, including minimum requirements, that provide adequate information security for electronic PHI for all County health care components, and responding to actual or suspected breaches in confidentiality or integrity of PHI.

II. NOTICE OF PRIVACY PRACTICES

Except for in the case of an inmate, a patient shall be provided notice of the County's privacy practices written in plain language.

A. Content of Notice. The County has developed a Notice of Privacy Practice ("Notice") containing all of the elements required by the Privacy Rule and it shall be implemented in accordance with the HIPAA Rules. The Notice includes:

i. A prominent display of the statement "THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY."

ii. A description of the County's uses and disclosures.

iii. A statement is provided that genetic information will not be disclosed absent authorization.

iv. A description of patient's rights including:

1. Requesting a copy of their medical record.
2. Requesting that the County corrects their medical record.
3. Requesting confidential communications.
4. Asking the County to limit what it uses or shares.
5. Obtaining a list of those whom the County has shared their PHI with.
6. Obtaining a copy of the County's Notice of Privacy Practices.
7. Choosing another individual to act on behalf of the patient.
8. Filing a complaint.

v. A description of the County's duties including a statement that the County:

1. is required to maintain the privacy of PHI.

2. is required to abide by the terms of its Notice, and
3. reserves the right to change the terms of its Notice.

vi. The contact information for the County Privacy Officer.

vii. The date on which the County's Notice of Privacy Practices was first in effect.

B. Provision of Notice.

i. *Generally.*

1. The Notice shall be made available on request to any individual.

ii. *For the County's health care components providing direct treatment.*

1. A County health care component must provide Notice at the patient's first date of service delivery or in an emergency situation, as soon as reasonably practicable after the emergency treatment situation.
2. Absent an emergency situation, a good faith effort shall be made to obtain a written acknowledgement of receipt of the Notice. If an acknowledgement is not obtained, the good faith efforts and reason why the acknowledgment was not retained shall be documented.
3. If the health care component has a physical delivery site: it shall have the Notice available at the service delivery site and post the notice in a clear and prominent location where it is reasonable to expect individuals seeking service to be able to read the Notice.

iii. *Changes to Notice.* The terms of the Notice may be changed from time to time. If a material change to the Notice is made, the revised Notice shall be prominently displayed on the County's website, available at the service delivery site and posted in a clear and prominent location where it is reasonable to expect individuals seeking service to be able to read the Notice.

iv. *Electronic Notice.*

1. The Notice shall be prominently posted on the County's web site and made available electronically through the web site.
2. An electronic version of the Notice may be provided to an individual via e-mail if the individual has agreed in writing to receive electronic notice. If it is known that an e-mail transmission failed, a paper copy of the Notice shall be provided to the individual.
3. If the first service delivery to an individual is delivered electronically, electronic Notice shall be provided automatically and contemporaneously in response to the individual's first request for service.
4. All individuals receiving electronic notice shall retain the right to obtain a paper copy of the Notice upon request.

C. Documentation. Compliance with this Section (Notice of Privacy Practices) shall be

documented by retaining copies of the Notice issued and, if applicable, any written acknowledgments of receipt of the notice or documentation of good faith efforts to obtain such written acknowledgment.

III. USES AND DISCLOSURES NOT REQUIRING AUTHORIZATION

A. Generally. No County employee shall use or disclose PHI unless permitted or required under the HIPAA Rules. In circumstances where use and disclosure of PHI is permitted or required, such use and disclosure may not necessitate obtaining the patient's authorization to do so. Nevertheless, reasonable efforts shall be made to obtain an individual's authorization to use and disclose PHI in every instance.

B. Required Uses and Disclosures Not Requiring Authorization.

i. To the individual.

1. Disclosure must be made to an individual properly requesting his or her PHI and does not require prior authorization, except for psychotherapy notes and information compiled in anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.

ii. When required by the Secretary of HHS.

1. Disclosure must be made when required by the Secretary of HHS to investigate or determine the County's compliance with the HIPAA Rules and do not require prior authorization.

C. Permitted Uses and Disclosures Not Requiring Authorization. All permitted uses and disclosures not requiring authorization made under this subsection shall, before being used and disclosed, be reviewed and approved by the Privacy Officer.

i. For Treatment, payment or health care operations. PHI may be used or disclosed without patient authorization for treatment, payment or health care operations.

1. More specifically, PHI may be used or disclosed without patient authorization:

- a. For a County health care component's own treatment, payment or health care operations.
- b. For treatment activities of a health care provider.
- c. To another covered entity or health care provider for the payment activities of the entity that receives the information.
- d. To another covered entity for health care operations activities of the entity that receives the information, if:
 - i. Each entity either has or had a relationship with the individual who is the subject of the PHI being requested,
 - ii. The PHI pertains to such relationship, and
 - iii. The disclosure is for the County's own treatment, payment or health care operations or for treatment

activities of a health care provider; or for the purpose of health care fraud and abuse detection or compliance.

2. Restriction on use and disclosure of PHI.

- a. An individual has the right to request, in writing, that the County restricts the use and disclosure of their PHI for treatment, payment or health care operations or for involvement in the individual's care or for notification purposes.
- b. Except as set forth below, the County is not required to agree to an individual's request for a restriction. But, if it does, it is bound to such restriction except in an emergency situation.
- c. The County must agree to an individual's request to restrict disclosure of PHI about an individual to a health plan if:
 - i. The disclosure is for the purpose of carrying out payment or health care operations and is not otherwise required by law, and
 - ii. The PHI pertains solely to a health care item or service for which the individual, or person other than the health plan on behalf of the individual, has paid the County in full.
- d. The County may terminate a restriction on the use and disclosure of PHI, if:
 - i. The individual agrees to or requests the termination in writing or
 - ii. The individual orally agrees to the termination and oral agreement is documented.
- e. All restrictions to the use and disclosure of PHI shall be documented.

3. Confidential Communications.

- a. An individual is permitted to request to receive communications of PHI by alternative means or at alternative locations. Such request shall be in writing directed to the Privacy Officer. All reasonable requests shall be accommodated.

ii. *As required by law.*

- 1. PHI may be used or disclosed without authorization or an opportunity to agree or object to the extent that such use or disclosure is required by law. However, such use and disclosure shall be limited to the relevant requirements of such law.

iii. *Public health activities.*

1. PHI may be used or disclosed without authorization or an opportunity to agree or object for the following public health activities and purposes:
 - a. Public health authority – PHI may be disclosed to a public health authority that is authorized by law to collect or receive information for the purpose of preventing or controlling disease, injury, or disability. PHI may also be disclosed at the direction of a public health authority to an official of a foreign government agency that is acting in collaboration with a public health authority.
 - b. Abuse or neglect – PHI may be disclosed to a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect.
 - c. FDA – PHI may be disclosed to a person subject to the jurisdiction of the Food and Drug Administration (“FDA”) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity.
 - d. Communicable diseases – PHI may be disclosed to a person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition.
 - e. Employer – PHI may be disclosed to an employer, about an individual who is a member of the employer’s workforce so long as the County provided health care to the individual, at the request of the employer to conduct an evaluation relating to medical surveillance of the workplace or to evaluate whether the individual has a work-related illness or injury.
 - f. School – PHI may be disclosed to school where the individual is a student or prospective student if:
 - i. The PHI disclosed is limited to proof of immunization,
 - ii. The school is required to have such proof of immunization, and
 - iii. The health care component obtains and documents an agreement, whether oral or written, for such disclosure from either:
 1. A parent, guardian, or other person acting in loco parentis of the individual, or
 2. The individual, if the individual is an adult or emancipated minor.
2. County Department of Health
 - a. The County Department of Public Health may use and disclose PHI, without authorization or an opportunity to agree or object,

in all cases in which it is permitted to disclose such information for public health activities under subsection (iii)(1)(a) above “Public Health Authority.”

iv. *Abuse, neglect or domestic violence.*

1. PHI may be used or disclosed without authorization or an opportunity to agree or object about an individual whom the County reasonably believes to be a victim of abuse, neglect or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect or domestic violence:
 - a. To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law,
 - b. If the individual agrees to the disclosure, or
 - c. To the extent the disclosure is expressly authorized by statute or regulation, and
 - i. The County believes the disclosure is necessary to prevent serious harm to the individual or other potential victims, or
 - ii. If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the PHI represents that the PHI for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.
2. If a disclosure is made under this subsection, the individual must be promptly informed that such a report has been or will be made, except if:
 - a. Informing the individual would place them at risk of serious harm, or
 - b. A personal representative would be informed and it is believed that the personal representative is responsible for the abuse, neglect or other injury and that informing such person would not be in the best interest of the individual.

v. *Health oversight activities.*

1. PHI may be disclosed without authorization or an opportunity to agree or object to a health oversight agency for oversight activities authorized by law.
2. PHI shall not be disclosed without authorization or an opportunity to agree or object where the activity is an investigation or other activity in

which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:

- a. the receipt of health care.
- b. a claim for public benefits related to health, or
- c. qualifications for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

3. To the extent that any County health care components are a health oversight agency, it may use PHI for health oversight activities as permitted by this subsection.

vi. *Judicial and administrative proceedings.*

1. PHI may be disclosed without authorization or an opportunity to agree or object in the course of any judicial or administrative proceeding:
 - a. In response to an order of a court or administrative tribunal, provided only the PHI expressly authorized by such order is disclosed, or
 - b. In response to a subpoena, discovery request, or other lawful process so long as the County receives satisfactory assurance. Any subpoenas, discovery requests, or other lawful process requesting disclosure of PHI shall be directed to the Privacy Officer.

vii. *Law enforcement purposes.*

1. PHI may be disclosed without authorization or an opportunity to agree or object for a law enforcement purpose to a law enforcement official under certain conditions. Law enforcement purposes may include:
 - a. Disclosure required by law, or
 - b. Compliance with a court order, warrant, subpoena or summons, a grand jury subpoena, administrative request.
2. PHI may be disclosed without authorization or an opportunity to agree or object in response to law enforcement official's information requests for identifying or locating a suspect, fugitive, material witness, or missing person.
3. PHI may be disclosed without authorization or an opportunity to agree or object in circumstances related to a crime including medical emergencies.

viii. *Coroners, medical examiners, and funeral directors.*

1. PHI may be used or disclosed without authorization or an opportunity to agree or object to a coroner, medical examiner or funeral director as necessary to carry out their duties with respect to the decedent.

ix. *Cadaveric organ, eye or tissue donation purposes.*

1. PHI may be used or disclosed without authorization or an opportunity to agree or object to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.

x. *Research.*

1. If the County Privacy Officer approves, PHI may be used or disclosed without authorization or an opportunity to agree or object for research.

xi. *Averting serious threat to health or safety.*

1. If the County Privacy Officer approves, PHI may be used or disclosed without authorization or an opportunity to agree or object if, in good faith, it is believed that the use or disclosure
 - a. Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the use or disclosure is to someone that is able to prevent or lessen the threat; or
 - b. Is necessary for law enforcement to identify or apprehend an individual.

xii. *Specialized government functions.*

1. If the County Privacy Officer approves, PHI may be used or disclosed without authorization or an opportunity to agree or object for military and veteran's activities, national security and intelligence activities, protective services for the President and others, medical suitability determinations, correctional institutions and other law enforcement custodial situations, and programs providing public benefits.

xiii. *Workers' compensation.*

1. PHI may be disclosed without authorization or an opportunity to agree or object as authorized by and to the extent necessary to comply with New York State laws relating to workers' compensation or other similar programs that provide benefits for work-related injuries or illness without regard to fault.

D. Verifying Identity of Authorized Person. Prior to using or disclosing PHI under this subsection, the identity of the person requesting the PHI and the authority for that person to have access to the PHI shall be verified.

E. Disclosure Log. A written record/log of every transmission or disclosure of PHI shall be kept. Information to be documented shall include:

- i. The date when and the person or entity to whom the disclosure was made,
- ii. the purpose for the disclosure,
- iii. a description of the information disclosed and

- iv. a basis providing the employee with the authority to transmit or disclose the PHI.

IV. USES AND DISCLOSURES REQUIRING AUTHORIZATION

A. Generally. Except for where otherwise noted in this subsection or as required by law, in the following circumstances PHI shall not be used or disclosed absent a valid authorization.

i. Psychotherapy notes.

- 1. A valid authorization must be obtained for use and disclosure of psychotherapy notes except:
 - a. To carry out the following treatment, payment or health care operations:
 - i. Use by the originator for treatment of the individual;
 - ii. Use or disclosure by the County for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or
 - iii. Use or disclosure by the County to defend itself in a legal action or other proceeding brought by the individual; and
 - b. A use or disclosure that is required or permitted under Section III(B) and (C) above with respect to oversight of the originator of the psychotherapy notes.

ii. Marketing.

- 1. A valid authorization must be obtained for use and disclosure of PHI for marketing except if the communications is in the form of:
 - a. A face-to-face communication made by the County to an individual; or
 - b. A promotional gift of nominal value provided by the County.

iii. Sale of PHI.

- 1. A valid authorization must be obtained for any disclosure of PHI which is a sale of PHI. Such authorization must state that the disclosure will result in remuneration to the County.

iv. Use and disclosure within the scope of authorization.

- 1. Use or disclosure of PHI, with a valid authorization, shall be consistent with such authorization.

B. Core Elements and Requirements for a Valid Authorization. A valid authorization must contain at a minimum the following:

i. Core elements.

1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.
2. The name or other specific information of the person(s), or class of persons, authorized to make the requested use or disclosure.
3. The name or other specific identification of the person(s), or class of persons, to whom the County may make the requested use or disclosure.
4. A description of each purpose of the requested use or disclosure.
5. An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure.
6. Signature of the individual and date.
 - a. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided.

ii. *Required statements.*

1. The individual's right to revoke the authorization in writing.
2. The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization.
3. The potential for information disclosed pursuant to the authorization to be subject to re-disclosure by the recipient and no longer be protected by this subpart.

iii. *Plain language.* The authorization shall be written in plain language.

iv. *Copy to the individual.* When an authorization is signed, a copy of the signed authorization shall be provided to the individual.

C. Defective Authorization. An authorization is invalid if the document has any of the following defects:

- i. Expiration date has passed or the expiration event is known by the County to have occurred.
- ii. The authorization is incomplete.
- iii. It is known by the County that the authorization has been revoked.
- iv. The authorization is a compounding or prohibited authorization.
- v. Any material information in the authorization that is known to the County to be false.

D. Compound Authorizations. An authorization for use or disclosure of PHI may not be combined with any other document to create a compound authorization unless approved by the Privacy Officer.

E. Prohibition on Conditioning Authorizations. The provision of treatment, payment, or eligibility for benefits shall not be conditioned upon receiving a signed authorization.

F. Revocation of Authorizations. An individual may revoke an authorization provided under this section at any time, provided that the revocation is in writing, except to the extent that:

- i. The County has taken action in reliance thereon; or
- ii. If the authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy or the policy itself.

G. Documentation. Any signed authorization shall be documented and retained.

V. USES AND DISCLOSURES REQUIRING AN OPPORTUNITY FOR THE INDIVIDUAL TO AGREE OR OBJECT

A. Generally. In certain circumstances the County may use or disclose PHI so long as the individual is informed in advance of the use or disclosure and has the opportunity to agree to, prohibit, or restrict the use or disclosure. In these circumstances, the individual may be informed orally and the County may obtain the individual's oral agreement or objection to a use or disclosure permitted under this section. All such oral communication(s) and agreement(s) or objection(s) shall be documented and retained.

B. Use and Disclosure for Directory Purposes.

i. Use and disclosure.

1. Except as otherwise provided in this subsection, in maintaining a directory of individuals, an individual's name, location within the County health care component, general description of individual's condition and the individual's religious affiliation may be used and disclosed.

ii. Opportunity to object.

1. An individual shall be informed of any PHI included in a directory and the persons to whom the County may disclose such information and the individual shall be provided with the opportunity to restrict or prohibit some or all of the uses or disclosures permitted under Section (v) (B)(i) above.

iii. Emergency circumstances.

1. Where the individual cannot practicably be informed of the County's intended uses and disclosures, the County may still use and disclose some or all of the PHI permitted above if such disclosure is consistent with the individual's prior expressed preference or in the exercise of professional judgment the County determines such use or disclosure is in the individual's best interests.

C. Use and Disclosure for Involvement in the Individual's Care and Notification.

i. Permitted uses and disclosures.

1. Pursuant to C(ii), (iii), (iv) and (v) as applicable, PHI may be disclosed to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual that is relevant to such person's involvement with the individual's health care or payment related to the individual's health care. Pursuant to the same below sections that are applicable, PHI may be used or disclosed to notify, or assist in the notification of a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death.

ii. *Uses and disclosures with the individual present.*

1. If the individual is present for, or otherwise available prior to, a use or disclosure permitted by C(i) above, and has the capacity to make health care decisions, PHI may be used or disclosed if:
 - a. The individual's agreement is obtained;
 - b. The individual is provided an opportunity to object to the disclosure, and the individual does not express an objection; or
 - c. In exercising professional judgment, it is inferred from the circumstances that the individual does not object to the disclosure.

iii. *Limited uses and disclosures when the individual is not present.*

1. If the individual is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, PHI directly relevant to the person's involvement with the individual's care or payment related to the individual's health care or needed for notification purposes may be disclosed so long as in the exercise of professional judgment it is determined that the disclosure is in the best interests of the individual.

iv. *Uses and disclosures for disaster relief purposes.*

1. The County may use or disclose PHI to a public or private entity authorized by law to assist in disaster relief efforts, for the purpose of coordinating with such entities in notifying family members or others involved in the individual's health care. The requirements in Section V subsections (C)(ii), (iii) and (v) apply to such uses and disclosures to the extent that the County, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

v. *Uses and disclosures when the individual is deceased.*

1. PHI may be disclosed to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual, who was involved in the individual's care or payment for

health care and to the extent that such PHI is relevant to such person's involvement, unless doing so is inconsistent with any prior expressed preference of the deceased individual that is known to the County.

VI. MINIMUM NECESSARY DISCLOSURE

A. Generally. With respect to all requests for, or the use and disclosure of PHI, the minimum PHI necessary shall be used or disclosed in accordance with the below. Under no circumstances shall an entire medical record be used, disclosed or requested unless it is specifically justified and documented as the amount reasonably necessary to accomplish the purpose of the use, disclosure, or request.

B. Minimum Necessary Uses of PHI. Reasonable efforts shall be made to identify the persons or class of persons, as appropriate, within the County who needs access to PHI to carry out their duties and the category or categories of PHI to which access is needed and any condition needed for such access.

C. Minimum Necessary Disclosures and Requests of PHI.

i. *Routine or recurring disclosures and requests.* For any type of disclosure and request made on a routine and recurring basis, policies and procedures shall be implemented by the County health care components limiting the PHI disclosed or requested to the amount reasonably necessary to achieve the purpose of the disclosure or request.

ii. *All other disclosures and requests.* For all other disclosures and requests, the County health care components shall develop criteria designed to limit the PHI disclosed or requested to the information reasonably necessary to accomplish the purpose for which disclosure or request is sought and review requests for disclosure on an individual basis in accordance with such criteria.

VII. RIGHTS OF INDIVIDUALS

A. Request for Privacy Protection of PHI.

i. *Request for restriction of uses and disclosures.*

1. An individual shall have the right to request that the County restricts uses or disclosures of:

a. PHI about the individual to carry out treatment, payment or health care operations and

b. PHI related to involvement in the individual's care and notification purposes under Section V(C) above.

2. Except in relation to disclosure of PHI to a health plan, the County is not required to agree to the requested restriction.

3. Absent an emergency, if the requested restriction is agreed to, the County shall be permitted to use the restricted PHI, or may disclose the restricted PHI, to a health care provider for purposes of treatment of the individual.
 - a. If restricted PHI is disclosed to a health care provider for emergency treatment, it shall be requested that such health care provider not further use or disclose the restricted PHI.
4. If the requested restriction is agreed to, it shall not apply in certain circumstances including:
 - a. When the County is required to disclose PHI to the Secretary of HHS to investigate to determine the County's compliance,
 - b. For the County's use and disclosure for facility directories pursuant to Section V(B) above, or
 - c. Section III above titled "USES AND DISCLOSURES NOT REQUIRING AUTHORIZATION."
5. A request to restrict disclosure of the individual's PHI to a health plan must be agreed to if:
 - a. The disclosure is for the purpose of carrying out payment or health care operations and is not otherwise required by law and the PHI pertains solely to a health care item or service for which the individual, or other person other than the health plan, has paid the County in full.
6. An agreement to a restriction may be terminated by the County if:
 - a. The individual agrees to or requests the termination in writing,
 - b. The individual orally agrees to the termination and the oral agreement is documented, or
 - c. When approved by the Privacy Officer, the County informs the individual that it is terminating its agreement to a restriction.
7. All agreements to a restriction of the use and disclosure of PHI shall be documented and permanently retained.

ii. *Request for confidential communications.*

1. Individuals shall be permitted to request, in writing, to receive communications of PHI from the County by alternative means or at alternative locations. Reasonable requests shall be accommodated.
2. An explanation from the individual as to the basis for the requested confidential communications shall not be a condition for granting the request.

B. Request for Access to PHI.

i. *Access to PHI.*

1. Right of access. An individual shall have a right of access to inspect and obtain a copy of their PHI for as long as the PHI is maintained by the County except for psychotherapy notes and information compiled in reasonable anticipation of, or for the use in, a civil, criminal, or administrative action or proceeding.

ii. *Requests for access and timely action.*

1. Individual's request for access. An individual shall be permitted to request, in writing, access to inspect or to obtain a copy of their PHI maintained by the County. Such written request shall be submitted to the Privacy Officer who shall be responsible for receiving and processing requests for access by individuals.

2. Timely action.

- a. If space is available, an opportunity for visual inspection of an individual's PHI must be permitted within ten (10) days of the individual's request and a copy of such records shall be furnished to the individual within a reasonable time thereafter.
- b. If space for inspection is not available, a copy of the requested records shall be provided to the individual within ten (10) days.

3. Fees. If an individual requests a copy of their PHI or agrees to a summary or explanation of such information, a reasonable, cost-based fee may be imposed which shall not exceed the cost incurred by the County, provided that the fee includes only the cost of:

- a. Labor for copying the PHI, whether in paper or electronic form;
- b. Supplies for creating the paper or electronic copy (not to exceed seventy-five cents per page);
- c. Postage; and
- d. Preparing an explanation or summary of the PHI if the individual agreed to the receipt of an explanation or summary.

iii. *Denial of access.*

1. Unreviewable grounds for denial. A request for access to PHI may be denied without providing the individual an opportunity for review in the following circumstances:
 - a. The request is for psychotherapy notes or information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.
 - b. The County Jail or a County health care component acting under the direction of the Jail may deny, in whole or in part, an inmate's request to obtain a copy of PHI, if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or the safety

of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate.

- c. An individual's access to PHI created or obtained by the County in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the County has informed the individual that the right of access will be reinstated upon completion of the research.
 - d. An individual's access may be denied if the PHI was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.
2. Reviewable grounds for denial. A request for access may be denied, with an opportunity to review the denial, in the following circumstances:
- a. A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person.
 - b. The PHI makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person, or
 - c. The request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.
3. Making other information accessible. Where access is denied to a part of an individual's PHI, to the extent possible, an individual shall be provided access to any other PHI requested.
4. Denial. The County shall provide written denial to the individual within ten (10) days of the individual's request. The denial must be in plain language and contain:
- a. The basis for the denial;
 - b. If applicable, a statement of the individual's review rights including a description of how the individual may exercise such review rights; and

- c. A description of how the individual may complain to the County Privacy Officer pursuant to Section XI or to the Secretary of HHS. The description must include the name, or title, and telephone number of the Privacy Officer.
- 5. Review of a denial of access. If access is denied on permitted grounds, the individual shall have the right to have the denial reviewed by a licensed professional who is designated by the County to act as a reviewing official and who did not participate in the original decision to deny and also by a New York State medical record access review committee.
- 6. Other responsibility. If the County does not maintain the PHI requested but it knows where the requested information is maintained, it shall inform the individual where to direct the request for access.

C. Request for Amendment of PHI.

i. *Right to amend.* An individual shall have the right to amend their PHI for as long as the information is maintained by the County.

- 1. Denial of Amendment. An individual’s request for an amendment may be denied if it is determined that the PHI:
 - a. Was not created by the County, unless the originator is no longer available to amend the information,
 - b. Is not part of a designated record set,
 - c. Would not be available for inspection under Section VII(B) above, or
 - d. Is accurate and complete.

ii. *Requests for amendment and timely action.*

- 1. Individual’s Request for Amendment. An individual shall be permitted to request amendment of their PHI maintained in a designated record set. Such request shall be in writing, provide reason(s) supporting such request, and submitted to the Privacy Officer who shall be responsible for receiving and processing requests for amendments by individuals.
- 2. Timely action. An individual’s request for an amendment shall be acted upon no later than sixty (60) days after receipt of such a request.
 - a. If action cannot be taken within the 60 day timeframe, the County may have an additional thirty (30) days to respond so long as within the 60 day timeframe it provides the individual with a written statement of the reasons for the delay and the date by which the County will complete its action on the request and the County has not previously had an extension on the same request.

iii. *Accepting the Amendment.* If a request for an amendment is accepted, in whole or in part, the following requirements must be satisfied:

1. Making the Amendment. Appropriate amendments shall be made to the PHI or record by, at a minimum, identifying the records in the record set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.
2. Informing the Individual. Timely inform the individual that the amendment is accepted and obtain the individual's identification of and agreement to notify the relevant person(s) with which the amendment needs to be shared in accordance with the subsection below.
3. Informing Others. Reasonable efforts shall be made to inform and provide the amendment within a reasonable time to:
 - a. Persons identified by the individual as having received PHI about the individual and needing the amendment, and
 - b. Persons, including business associates, that the County knows have the PHI that is the subject of the amendment and that may have relied, or could foreseeably rely, on such information to the detriment of the individual.

iv. *Denying the Amendment.* If a request for an amendment is denied, in whole or in part, the following requirements must be satisfied:

1. Denial. A written denial shall be timely provided to the individual no later than sixty (60) days after receipt of the request. The denial shall use plain language and contain:
 - a. The basis of the denial,
 - b. The individual's right to submit a written statement disagreeing with the denial and the individual may file such statement,
 - c. A statement that, if the individual does not submit a statement of disagreement, the individual may request that the County provide the individual's request for amendment and the denial with any future disclosures of PHI that is the subject of the amendment, and
 - d. A description of how the individual may complain to the Privacy Officer or to the Secretary of HHS. The description must include the Privacy Officer's title and telephone number.
2. Statement of Disagreement. An individual shall be permitted to submit a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement.
3. Rebuttal Statement. The County shall be permitted to prepare a written rebuttal to the individual's statement of disagreement. Whenever such a rebuttal is prepared, a copy shall be provided to the individual who submitted the statement of disagreement.

4. Record Keeping. As appropriate, the record or PHI shall be identified in the designated record set that is the subject of the disputed amendment and append or otherwise link the individual's request for an amendment, the County's denial of the request, the individual's statement of disagreement, if any, and the County's rebuttal, if any, to the designated record set.
5. Future Disclosures.
 - a. If a statement of disagreement has been submitted by the individual, either the individual's request for an amendment, the County's denial of the request, the individual's statement of disagreement, if any, and the County's rebuttal or an accurate summary of any such information shall be included with any subsequent disclosure of PHI to which the disagreement relates.
 - b. If a statement of disagreement was not submitted, either the individual's request and the County's denial or an accurate summary of such information shall be included with any subsequent disclosure of PHI to which the disagreement relates.

v. *Actions on notices of amendment*. If the County is informed by another covered entity of an amendment to an individual's PHI, the County shall amend the PHI accordingly.

D. Request for an Accounting of Disclosures of PHI.

i. Right to an accounting of disclosures of PHI.

1. An individual shall have a right to receive an accounting of disclosures of PHI made by the County up to the six years prior to the date on which the accounting is requested, except for disclosures:
 - a. To carry out treatment, payment and health care operations as provided,
 - b. To individuals of PHI about them,
 - c. Incident to a use or disclosure otherwise permitted or required,
 - d. Pursuant to an authorization,
 - e. For a County health care component's directory or to persons involved in the individual's care or other notification purposes,
 - f. For national security or intelligence purposes,
 - g. To correctional institutions or law enforcement officials,
 - h. As part of a limited date set, or
 - i. That occurred prior to the County's compliance date.
2. Where providing the individual with an accounting would be reasonably likely to impede a health oversight agency or law

enforcement official's activities, as indicated by a health agency or law enforcement official statement, an individual's right to an accounting shall be temporarily suspended.

a. If the agency or official's statement is made orally, the County shall:

- i. Document the statement, including the identity of the agency or official making the statement,
- ii. Temporarily suspend the individual's right to an accounting of disclosures subject to the statement, and
- iii. Limit the temporary suspension to no longer than thirty (30) days from the date of the oral statement unless a written statement is submitted during that time.

ii. *Request for an accounting.* A request for an accounting shall be submitted to the Privacy Officer who shall be responsible for receiving and processing requests for an accounting by individuals.

iii. *Content of the accounting.* Except as otherwise provided, an individual requesting an accounting shall be provided a written accounting meeting the following requirements:

1. Disclosures of PHI that occurred up to six years prior to the date of the request for an accounting, including disclosures to or by County business associates,
2. The date of the disclosure,
3. The name of the entity or person who received the PHI and, if known, the address of such entity or person,
4. A brief description of the PHI disclosed, and
5. A brief statement of the purpose of the disclosure or, in lieu of such statement, a copy of a written request for a disclosure.
6. If during the accounting period the County has made multiple disclosures to the same person or entity for the same purpose, it shall provide the above five requirements in addition to the frequency, periodicity, or number of the disclosures made during the accounting period and the date of the last such disclosure.
7. If during the accounting period the County made disclosures of PHI for a particular research purpose, provision of the accounting shall be approved by the Privacy Officer.

iv. *Providing the accounting to the individual.*

1. A request for an accounting shall be acted upon no later than sixty (60) days after receipt of such request. If the County is unable to provide the accounting within such time frame, it may extend the time to provide the accounting by no more than 30 days, provided that the County provides the individual with a written statement of the reasons for the delay and the date by which the accounting will be provided. Only one such extension shall be permitted.

2. The first accounting provided to an individual in any twelve (12) month period shall be provided without charge. However, the County shall be permitted to impose a reasonable, cost-based fee for each subsequent request for an accounting by the same individual within the 12 month period, provided that the individual is informed of such fee in advance.

v. *Documentation.* Any time a written accounting is provided to an individual such accounting shall be documented and permanently retained.

VIII. BUSINESS ASSOCIATES

A. Business Associate Agreement Requirements. A contract between the County and a business associate must:

i. *Establish the permitted and required uses and disclosures.* The contract may not authorize the business associate to use or further disclose PHI in a manner that would violate the HIPAA Rules except that:

1. The contract may permit the business associate to use and disclose PHI for the proper management and administration of the business associate and
2. The contract may permit the business associate to provide data aggregation services relating to the County's health care operations.

ii. *Provide that the business associate will:*

1. Not use or further disclose the information other than as permitted or required by the contract or as required by law,
2. Use appropriate safeguards and comply, where applicable, with paragraph number 3 below with respect to electronic PHI, to prevent use or disclosure of the information other than as provided for by its contract,
3. Report to the County any use or disclosure of the information not provided for by its contract of which it becomes aware, including breaches of unsecured PHI,
4. Ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the business associate agree to the same restrictions and conditions that apply to the business associate with respect to such information,
5. Make available PHI for an individual's right to access for amendment and incorporate any amendments to protected health information and for accounting of disclosures.
6. To the extent the business associate is to carry out a County obligation, comply with the requirements that apply to the County in the performance of such obligation.
7. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the business

associate on behalf of, the County available to the Secretary for purposes of determining the County's compliance with the HIPAA Rules and

8. At termination of the contract, if feasible, return or destroy all PHI received from, or created or received by the business associate on behalf of, the County that the business associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

iii. *Authorize the County to terminate the contract where business associate has violated a material term of the contract.*

B. Where Business Associate is also a Government Entity.

i. Where the business associate is another government entity, the County and the other government entity may enter into a memorandum of understanding ("MOU").

ii. If a business associate is required by law to perform a function or activity on behalf of the County or to provide a service described in the definition of business associate to the County, the County may disclose PHI to the business associate to the extent necessary to comply with the legal mandate provided that the County attempts in good faith to obtain satisfactory assurances, if applicable, and, if such attempt fails, documents the attempt and the reasons that such assurances cannot be obtained.

iii. The County may omit the termination authorization, if such authorization is inconsistent with the statutory obligations of the County or its business associate.

iv. The County may disclose only a limited data set to a business associate for the business associate to carry out a health care operation function if first approved by the Privacy Officer.

C. Other Requirements for Business Associate Agreements/MOUs.

i. An agreement/MOU between the County and the business associate may permit the business associate to use PHI received by the business associate in its capacity as a business associate to the County, if necessary:

1. For the proper management and administration of the business associate, or
2. To carry out the legal responsibilities of the business associate.

ii. An agreement/MOU between the County and the business associate may permit the business associate to disclose PHI received by the business associate in its capacity as a business associate for the purposes described above, if:

1. The disclosure is required by law, or

2. The business associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person; and
 - a. The person notifies the business associate of any instances of which it is aware in which the confidentiality of the information has been breached.

D. Business Associate Agreements with Subcontractors.

i. The policies and procedures of this section shall apply to the contract/MOU between a business associate and a business associate that is a subcontractor in the same manner as such requirements apply to contracts or other arrangements between the County and its business associate.

IX. TRAINING

A. Generally. As a hybrid entity, the County shall train all its health care component members of its workforce on these policies and procedures as necessary and appropriate for the members of the workforce to carry out their functions within the County.

B. Training.

i. The County shall provide training that meets the requirements above, as follows:

1. To each member of the County health care component's workforce by no later than the County's compliance date,
2. Thereafter, to each new member of the County health care component's workforce within a reasonable period of time after the person joins the County health care component's workforce, and
3. To each member of a County health care component's workforce whose functions are affected by a material change in these policies or procedures within a reasonable period of time after the material change becomes effective.

ii. Evidence that the above training has been provided shall be documented and permanently retained.

X. SAFEGUARDING PHI

A. The County shall have in place administrative, technical, and physical safeguards protecting the privacy of PHI from any intentional or unintentional use or disclosure that is in violation of these policies and procedures and limiting incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure.

XI. COMPLAINTS

A. The County's complaint process is attached as Appendix A. Such process may be changed by the Privacy Officer from time to time.

B. The County shall document all complaints received, investigation into those complaints, and their disposition, if any.

XII. DISCIPLINARY ACTION

A. The County shall have and apply appropriate disciplinary actions against members of its workforce who fail to comply with these policies and procedures.

i. Any violation(s) of these policies and procedures will subject the employee to disciplinary action up to and including termination.

B. All disciplinary actions that are applied, if any, shall be documented.

XIII. MITIGATION

A. The County shall mitigate, to the extent practicable, any harmful effect that is known to the County of a use or disclosure of PHI in violation of its policies and procedures or the requirements of this subpart by the County or its business associate.

XIV. RETALIATION AND WAIVER

A. Retaliation.

i. The County:

1. May not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any individual for the exercise by the individual of any right established, or for participation in any process provided for, by these policies and procedures including the filing of a complaint; and
2. Must refrain from intimidation and retaliation.

B. Waiver.

i. Individuals shall not be required to waive their rights under the HIPAA Rules as a condition of the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits.

XV. DOCUMENTATION AND RETENTION

A. Documentation. The County shall:

- i. Maintain these policies and procedures in written or electronic form.
- ii. If a communication is required by these policies and procedures to be in

writing, maintain such writing, or an electronic copy, as documentation and if an action, activity, or designation is required by these policies and procedures to be documented, maintain a written or electronic record of such action, activity, or designation.

iii. Maintain documentation sufficient to prove that all notifications were made as required by these policies and procedures or that the use or disclosure did not constitute a breach.

B. Retention. The documentation required above shall be retained permanently.

XVI. DATA BREACH NOTIFICATION

A. Breach Defined. Breach means the acquisition, access, use, or disclosure of PHI in a manner not permitted by the HIPAA Rules which compromises the security or privacy of PHI.

B. Suspected Breach.

i. Where a breach of PHI is suspected or notification of a suspected breach has been received, the Privacy Officer and Security Officer shall be notified immediately.

ii. Where a breach of PHI is suspected or notification of a suspected breach has been received, the County shall:

1. Determine whether there has been an impermissible acquisition, access, use or disclosure of PHI.
2. Determine whether any of the 3 following exceptions apply:
 - a. Unintentional acquisition, access or use: Made in good faith, within the course and scope of employment or other professional relationship, and does not result in further use or disclosure.
 - b. Inadvertent disclosure: This covers disclosures from an otherwise authorized individual to another similarly situated individual at the same facility, if not further used or disclosed without authorization.
 - c. Inability to retain the information: The unauthorized person to whom the PHI was disclosed would not have been able to retain the information.
3. Determine and document if the impermissible use or disclosure compromises the security or privacy of PHI.

iii. Except as provided in (i) above, an acquisition, access, use or disclosure of PHI in a manner not permitted under the HIPAA Rules is presumed to be a breach unless the County or its business associate, as applicable, demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

1. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

2. The unauthorized person who used the PHI or to whom the disclosure was made;
3. Whether the PHI was actually acquired or viewed; and
4. The extent to which the risk to the PHI has been mitigated.

C. Notification to Individuals.

i. *Generally.* Following discovery of a breach of PHI, the County shall within a reasonable time period and without unnecessary delay, but not later than sixty (60) calendar days after discovery, notify each affected individual.

ii. *Content of Notification.* When notification of a breach is required, it shall include, to the extent possible, and in plain language:

1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
2. A description of the types of unsecured PHI that were involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
4. A brief description of what the County is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
5. Contact procedures for individuals to ask questions or learn additional information, which shall include a toll free telephone number, an e-mail address, website, or postal address.

iii. *Methods of Individual Notification.* When notification of a breach is required, it shall be provided, by one or more mailings as information is available, in the following form:

1. Written Notice.
 - a. Written notification by first-class mail to the individual at the last known address of the individual or, if the individual agrees to electronic notice and such agreement has not been withdrawn, by electronic mail. The notification may be provided in one or more mailings as information is available.
 - b. If the County knows the individual is deceased and has the address of the next of kin or personal representative of the individual, written notification by first-class mail to either the next of kin or personal representative of the individual.
2. Substitute Notice. If there is insufficient or out-of-date contact information that precludes written notification to the individual, a substitute form of notice reasonably calculated to reach the individual shall be provided.

- a. In the case in which there is insufficient or out-of-date contact information for fewer than 10 individuals, then such substitute notice may be provided by an alternative form of written notice, telephone, or other means.
 - b. In the case in which there is insufficient or out-of-date contact information for 10 or more individuals, then such substitute notice shall:
 - i. Be in the form of either a conspicuous posting for a period of ninety (90) days on the County’s website, or conspicuous notice in major print or broadcast media in geographic areas where the individuals affected by the breach likely reside; and
 - ii. Include a toll-free phone number that remains active for at least ninety (90) days where an individual can learn whether the individual’s PHI may be included in the breach.
 - c. Substitute notice shall not be provided where there is insufficient or out-of-date contact information that precludes written notification to the next of kin or personal representative of the individual.
3. Additional Notice in Urgent Situations. Where imminent misuse of PHI is possible, the County may provide additional information to affected individuals by telephone or written notice.

D. Notification to the Media. For a breach of PHI involving more than five hundred (500) residents of a State or jurisdiction, the County shall, within a reasonable time period and without unnecessary delay, but not later than sixty (60) calendar days after discovery, notify prominent media outlets serving the State or jurisdiction. The content of the notice shall comply with subsection C(ii) *Content of Notification* above.

E. Notification to the Secretary.

i. *Generally.* Where it is determined that there has been a breach of PHI, the County shall notify the Secretary of the U.S. Department of Health and Human Services (“HHS”).

ii. *Less than 500 Individuals Impacted.* If less than 500 individuals’ PHI has been breached, the County shall:

1. Maintain a log or other documentation of such breaches and
2. Not later than 60 days after the end of each calendar year, notify the Secretary of HHS of those breaches, in the manner specified on the HHS website.

iii. *Five Hundred or More Individuals Impacted.* For a breach of PHI involving 500 or more individuals, the County shall notify the Secretary of HHS contemporaneously with notifying each impacted individual.

F. Business Associates. The County, through its business associate agreement, shall ensure that business associates immediately upon discovery of a breach of PHI:

- i. Notify the County of the names of all individuals whose PHI has been, or is reasonably believed by the business associate to have been accessed, acquired, used or disclosed during a breach;
- ii. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
- iii. A description of the types of unsecured PHI that were involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
- iv. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
- v. A brief description of what can be done to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
- vi. Contact procedures for individuals to ask questions or learn additional information, which shall include a toll free telephone number, an e-mail address, website, or postal address.

G. Law Enforcement Delay.

- i. If a law enforcement official states to the County or its business associate that a notification, notice, or posting required under these policies and procedures would impede a criminal investigation or cause damage to national security, the County or its business associate shall:
 1. If the statement is in writing and specifies the time for which a delay is required, delay such notification, notice, or posting for the time period specified by the official; or
 2. If the statement is made orally, document the statement, including the identity of the official making the statement, and delay the notification, notice, or posting temporarily and no longer than thirty (30) days from the date of the oral statement, unless a written statement as described in paragraph (a) of this section is submitted during that time.

Appendix A — Complaint Procedure

Anyone who wishes to make a complaint regarding a breach or suspected breach of Protected Health Information should complete and submit a HIPAA Complaint Form which is available on the Livingston County website, <http://www.livingstoncounty.us/>, or can be provided by the Privacy Officer's Office (address below). If the Complaint Form is needed in a language other than English, please contact the Privacy Officer at the address provided below. The Complaint Form should be submitted to the Privacy Officer at:

HIPAA Privacy Officer
Livingston County Attorney
County Attorney's Office
6 Court Street, Room 302
Geneseo, New York 14454

Upon the Privacy Officer's receipt of a complaint, the Privacy Officer shall acknowledge receipt of the complaint by written letter to the complainant. Following acknowledgment, the Privacy Officer shall notify and coordinate with the County Compliance Officer and County department head, or their HIPAA designee, associated with the complaint, to determine the nature of complaint and conduct a full investigation which may include:

- Reviewing the record(s) and any other pertinent information, and
- Workforce interview(s)

Upon completion of the investigation, any action taken may include:

- Correspondence with complainant and degree of satisfaction
- Staff education/counseling/disciplinary action(s)
- Policy changes

If the complainant requests a response, a written response shall be timely provided summarizing the conclusion but not detailing specifics of the investigation or corrective actions taken. Where the complainant has limited English proficiency, the Privacy Officer will arrange for the provision of language interpretation services and/or for the translation of the response to the complainant.

If the complainant does not believe that the response satisfactorily resolves the issue, the complainant may file a complaint with the United States Department of Health and Human Services Officer for Civil Rights by sending a letter to 200 Independence Avenue, S.W., Washington, D.C. 20201, calling 1-877-696-6775, or visiting www.hhs.gov/ocr/privacy/hipaa/complaints/.

All complaints, coordination, investigation, action and responses shall be documented and permanently retained.

Livingston County

HEALTH INFORMATION PRIVACY COMPLAINT FORM

YOUR FIRST AND LAST NAME		
HOME/CELL/WORK PHONE (Please include area code)		
STREET ADDRESS		CITY
STATE	ZIP	E-MAIL ADDRESS (If available)
Are you filing this complaint for someone else? Yes / No	If yes, whose health information rights do you believe were violated? FIRST NAME LAST NAME	
Who or what County Department do you believe violated your (or someone else's) health information rights?		
On what date(s) do you believe the violation occurred?		
Describe briefly how and why you believe your (or someone else's) health information rights were violated.		
Do you need special accommodations to communicate with you regarding this complaint?		
<input type="checkbox"/> Braille		
<input type="checkbox"/> Sign Language interpreter (specify language) _____		
<input type="checkbox"/> Foreign language interpreter (specify language) _____		
<input type="checkbox"/> Large Print		
<input type="checkbox"/> Electronic mail		
<input type="checkbox"/> Other _____		
SIGNATURE		DATE