

**NEW YORK STATE MENTAL HYGIENE LAW SECTION 33.13 (d)
CONFIDENTIALITY AGREEMENT**

-between-

THE NEW YORK STATE OFFICE OF MENTAL HEALTH

-and-

THIS AGREEMENT, is entered into the ____ day of _____, 20 ____, by and between the New York State Office of Mental Health (OMH) and _____, hereinafter referred to as “PROVIDER.”

WHEREAS, New York State Mental Hygiene Law Section 33.13 evidences the Legislature’s intent to facilitate the flow of patient information within the provider network, in order to assure continuity and appropriateness of care; and

WHEREAS subdivision (d) of such section permits entities and persons responsible for the provision of services for current or former patients (i.e., individuals concerning whom clinical information is maintained or possessed by OMH or a licensed facility, ward, wing or unit) may share with each other information necessary to such provision of services, provided there is some nexus, or link, with OMH through licensure, a local or unified services plan, an agreement, or consistent with standards established by the Commissioner for purposes of implementing Kendra’s Law, and the patient’s consent/authorization to such information-sharing is not legally mandatory; and

WHEREAS, PROVIDER is an entity or person with the required nexus, or link, with OMH that is a condition precedent pursuant to subdivision (d) of Mental Hygiene Law Section 33.13 to share information necessary to the provision of services to current or former patients of providers under the jurisdiction of OMH; and

WHEREAS, PROVIDER is an enrolled provider in the Medicaid program, i.e., that program of medical assistance for needy persons established under Title XI of Article 5 of the Social Services Law and pursuant to Title XIX of the Federal Social Security Act, (“Medicaid”) and furnishes items or services for which payment is claimed or reported under the Medicaid program or which offers to furnish such items or services; and

WHEREAS, PROVIDER is a provider of health and/or behavioral health services, some of which are billable under the Medicaid program; and

WHEREAS, the OMH is a “covered entity” for purposes of 45 C.F.R. Parts 160, 164 (the HIPAA Privacy Rules) and is therefore bound by the provisions of these rules; and

WHEREAS the HIPAA Privacy Rules permit disclosures of individually identifying health information, or protected health information (“PHI”) for treatment purposes without requiring patient consent or authorization; and

WHEREAS because New York State Mental Hygiene Law Section 33.13, specifically subdivision (d) of such section, is more stringent than HIPAA with respect to disclosing information for treatment purposes without patient consent/authorization, an agreement is necessary before information can be shared by OMH with PROVIDER for treatment purposes without such consent/authorization; and

WHEREAS, OMH has developed and seeks to implement the Psychiatric Services and Clinical Knowledge Enhancement System, (“PSYCKES”) a web-based tool for sharing certain state administrative health data (which includes PHI) for treatment purposes, including improving clinical decision making in integrated health and behavioral health services; and

WHEREAS, OMH and PROVIDER seek to support quality improvement, safety, and improved clinical decision making in integrated health and behavioral health services; monitor access to and utilization of Medicaid services and establish utilization controls; promote cost effective integrated health and behavioral health services; and coordinate management of high cost recipients, high risk recipients and underserved or sub-optimally treated recipient populations with control agencies and providers; and

WHEREAS, OMH wishes to ensure that all PHI received or created from, for or on behalf of OMH is in accordance with all applicable state and federal laws, including, without limitation, New York State Mental Hygiene Law Sections 33.13 and 33.16 and the HIPAA Privacy Rules, and associated OMH policies and procedures;

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Nature of the Services to be Provided:

(a) PROVIDER is a provider of behavioral health treatment services and/or general health care services. Use of the data that includes PHI will be limited to the purposes directly related to identifying and serving the needs of PROVIDER patients, and shall include:

- (i) supporting clinical decision making including evaluation and planning of treatment services;
- (ii) supporting patient engagement in appropriate care;
- (iii) identifying patients served by PROVIDER that have quality concerns;
- (iv) supporting coordination of care between Providers;

(v) supporting coordination of care between PROVIDER and OMH and/or the local governmental unit; and

(vi) supporting patient education.

(b) For purposes of this Agreement, the term “PROVIDER patients” shall mean any individual who is or has been:

(i) served by PROVIDER as evidenced by an adjudicated claim;

(ii) seeking services from PROVIDER;

(iii) referred to PROVIDER by means of Local Governmental Units (LGU's), as defined in Article 41 of the New York State Mental Hygiene Law, and Single Point of Access agencies that coordinate care with OMH at the local level; or

(iv) assigned to PROVIDER (including, but not limited to Health Home and/or Performing Provider System services)

2. Nature and Extent of Patient Information to be Disclosed

OMH will grant the PROVIDER access to aggregate, de-identified data on the performance of all Providers in New York State on quality measures, and protected health information pertaining to PROVIDER patients that is available in PSYCKES, including:

(a) Confidential health information (excluding HIV, family planning, substance abuse, and genetic disorders related data) for PROVIDER patients **with quality and safety concerns.**

(b) Confidential health information (including HIV, family planning, substance abuse, and genetic disorders related data) for all admitted patients of PROVIDER who sign a PSYCKES Consent Form permitting PROVIDER access. PROVIDER shall review the PSYCKES Consent Forms with its patients, and shall retain a copy of the signed forms.

(c) Confidential health information (including HIV, family planning, substance abuse, and genetic disorders related data) for any PROVIDER patient who is medically incapacitated in a medical or psychiatric emergency.

3. Privacy Requirements and Security Procedures and Protocols

(a) PROVIDER will comply with all privacy requirements and security procedures and protocols of OMH with respect to access to PSYCKES, including but not limited to the execution of a Confidentiality and Nondisclosure Agreement and Computer Application Sharing Form, and/or Data Exchange Agreement (as applicable).

(b) Only staff of PROVIDER who require the data to perform the functions of this Agreement will be given access to the data. Such staff shall be trained by PROVIDER as to the confidential nature of the data, and its proper handling, and each such staff person shall sign an agreement agreeing to use or handle such data accordingly, and agreeing to meet any other appropriate City, State or Federal privacy and security requirements to access, use or disclose confidential data.

(c) PROVIDER and staff of PROVIDER shall ensure that any confidential health information shall remain confidential and shall only be stored, accessed, used or disclosed in accordance with applicable provisions of State and Federal law. Under the Mental Hygiene Law, further disclosure of such confidential mental health information is strictly limited to those circumstances in which consent of the patient is obtained, a court order is issued, or the recipient of the disclosed information is otherwise authorized to receive such information under Mental Hygiene Law section 33.13.

(d) PROVIDER and OMH will from time to time conduct audits of consent forms, and of PROVIDER's PSYCKES use logs to monitor adherence to procedures and compliance with applicable laws and rules.

4. Additional Provisions Specific to Use of Medicaid data:

(a) Medicaid data made available by OMH in PSYCKES to PROVIDER shall be used in a manner which supports the administration of the Medicaid program, consistent with the requirements of New York State Social Services Law §§ 367-b and 369, and federal Social Security Act § 1902(a)(7).

(b) For purposes of this Agreement, "Medicaid data" shall mean and include claims, managed care encounters, and recipient eligibility and demographic data.

(c) For purposes of this Agreement, "Medicaid recipient" shall mean an individual who is or has been Medicaid eligible and has received services during that period of eligibility.

(d) Medicaid data made available by OMH in PSYCKES shall be used by PROVIDER to improve the quality, safety and efficiency of services by:

(i) supporting the conduct of PROVIDER and OMH quality improvement programs, and utilization management programs;

(ii) reviewing performance on quality and efficiency measures relative to other Providers;

(iii) tracking performance on quality and efficiency measures over time;

(iv) supporting reporting requirements of OMH and local governmental units;

(v) monitoring Medicaid recipient outcomes; and

(vi) providing Medicaid recipients with a summary of their clinical health information.

(e) Consistent with federal regulations at 42 CFR 431.306(b), OMH and PROVIDER shall have policies and procedures to protect the security and confidentiality of the data, comparable in scope and method with those of the Department of Health.

(f)) To the extent Medicaid data available from PSYCKES contains confidential HIV related information, as defined by New York State Public Health Law §2780(7), such data can only be used for a purpose directly connected with the administration of the Medicaid program and consistent with the limitations of New York State Public Health Law § 2782 relating to persons to whom or entities to which confidential HIV related information may be disclosed. Such a purpose may include supervision, monitoring, administration or provision of Medicaid care, services and supplies.

(g) To the extent Medicaid data available from PSYCKES includes individually identifying alcohol and drug abuse patient records which are subject to the provisions of 42 CFR Part 2, such information shall only be used or disclosed in accordance with such regulations.

Authorization

Provider Authorized Signatory: I agree to the terms and have legal authority to commit the Provider to them.	Name	Date
	Signature	
OMH Data Owner	Name	Date
	Signature	