

**NYSDOH LHCSA P & P Manual Review Tool
PART B**

**NEW YORK STATE DEPARTMENT OF HEALTH
Division of Home and Community Based Services
FINAL: January 2017
Distributed 1-5-17**

Agency Name: _____ **Date Submitted:** _____

Initial Review Start Date: _____ **Initial Review Completion Date:** _____

Regional Office Review Start Date: _____ **Regional Office Reviewer:** _____

Regional Office P & P Approval Date: _____

Instructions for using Part B of the LHCSA Manual Policy and Procedure Review Tool

Surveyor should complete all sections of the tool based on review of materials submitted.

Regulation Column: Regulation language is copied from 10 NYCRR Parts 765, 766, 402 and 403. The agency's policies must be consistent and cross reference the regulatory requirements being addressed on each policy.

Submission Date P & P: Surveyor should indicate for each policy the initial submission date.

Revised Date(s) Submitted: Surveyor should indicate for each policy if revised the submitted date of revision.

Policy and Procedure Manual: Indicate Page and Section found in the applicant's manual/table of contents.

Evaluation Column: The surveyor should indicate in each column 1, 2, 3: either Y (yes) or N (no) based on the following Codes:

- 1 = Is the Policy Statement acceptable?
- 2 = Is the Procedure acceptable?
- 3 = Is the P & P acceptable? If yes, please indicate date.

Comments: The surveyor can indicate any specific comments in this column that may be useful for communicating with the applicant and/or requesting additional information.

ACO: Surveyors must document all activities and time spent on the LHCSA Policy and Procedure Manual review in ACO and in their 670 hours.

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765-1.12	<p>Section 765-1.12 - Transfers of Interest by Persons or Partnerships</p> <p>765-1.12 Transfers of interest by persons or partnerships: Any change in the person who or partnership which is the operator of a licensed home care services agency must receive the prior approval of the Public Health Council in accordance with the applicable requirements of article 36 of the Public Health Law and this Subpart. In the event such change is occasioned by the death of an operator, the department shall be notified immediately and application shall be made for approval of such change within 30 days of such death. A person or partnership seeking Public Health Council approval for the transfer of all or part of the ownership of the business shall file, in addition to meeting the other applicable requirements of this Subpart, the applicable information, documents and data as follows:</p> <p>(a) a photocopy of the applicant's existing or executed proposed certificate of doing business;</p> <p>(b) a photocopy of any corporate applicant's executed existing or proposed applicable corporate certificate;</p> <p>(c) where the applicant is a partnership, full and true copies of all partnership agreements;</p> <p>(d) a declaration of the percentage of the business to be transferred; and</p> <p>(e) such additional pertinent information or documents necessary for Public Health Council consideration, as requested</p>					
765-1.13	<p>Section 765-1.13 Transfers of Stock</p> <p>765-1.13 Transfers of stock: (a) Any transfer, assignment or other disposition of 10 percent or more of the stock or voting rights thereunder of a corporation which is the operator of a licensed home care services agency, or any transfer, assignment or other disposition of the stock or voting rights thereunder of such a corporation which results in the ownership or control of more than 10 percent of the stock or voting rights</p>					

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	<p>thereunder of such corporation by any person, must receive the prior approval of the Public Health Council in accordance with the applicable requirements of article 36 of the Public Health Law and this Subpart. In the event such change is occasioned by the death of a stockholder, the department shall be notified immediately and application shall be made for approval of such change within 30 days of such death. An applicant who proposes to acquire stock or voting rights thereunder in a business corporation, the transfer of which requires the approval of the Public Health Council, shall file, in addition to meeting the other applicable requirements of this Subpart, information, documents and data as follows:</p> <p>(1) a statement identifying the number of shares of stock or voting rights thereunder to be acquired and the percentage of total issued and outstanding stock represented by such shares; and</p> <p>(2) such additional pertinent information or documents necessary for the Public Health Council's consideration, as requested.</p> <p>(b) Any transfer, assignment or other disposition of 10 percent or more of the stock or voting rights thereunder to the corporation, or any transfer, assignment or other disposition of the stock or voting rights thereunder which results in the ownership or control of more than 10 percent of the stock or voting rights thereunder by the corporation, or any transfer, assignment or other disposition of 10 percent or more of the stock or voting rights thereunder by the corporation, shall be subject to the prior approval by the Public Health Council in accordance with the applicable requirements of this Subpart and this section.</p>					
765-1.14	<p>Section 765-1.14 - Acquisition of Control of the Operator of an Agency</p> <p>765-1.14 Acquisition of control of the operator of an agency: This section relates to changes in the control of an operator of a licensed home care services agency not covered in section 765-1.12 or 765-1.13 of this Subpart. Changes covered in section 765-1.12 or 765-1.13 shall require prior approval of the Public Health Council.</p> <p>(a) (1) Any change in the controlling person(s) of the operator of a not-for-</p>					

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	<p>profit or proprietary licensed home care services agency, other than a change subject to prior approval pursuant to section 765-1.12 or 765-1.13 of this Subpart, shall be subject to the approval of the Public Health Council in accordance with the applicable requirements of article 36 of the Public Health Law and this Subpart. A person seeking approval as a controlling person of the operator of a licensed home care services agency shall file an application for Public Health Council approval within 30 days of becoming a controlling person, in accordance with the applicable requirements of this Subpart.</p> <p>(2) Pending a decision by the Public Health Council, an applicant shall refrain from exercising control over the licensed home care services agency by directing or causing the direction of the actions, management or policies of the agency, whether through voting securities or voting rights thereunder, electing or appointing directors, the direct or indirect determination of policies, or otherwise. The applicant shall submit, as part of the application, an affidavit whereby the applicant affirms that it will not exercise control over the agency pending a decision by the council.</p> <p>(b) If the Public Health Council disapproves an application to become a controlling person under subdivision (a) of this section, the applicant shall divest himself of the controlling interest over the operator of the licensed home care services agency within 30 days of the council's final decision.</p> <p>(c) Notwithstanding any other provision of this section, the prior approval of the Public Health Council must be obtained, pursuant to the applicable requirements of article 36 of the Public Health Law and this Part, if a person who proposes to become a controlling person of the operator of a licensed home care services agency is not able to refrain from exercising control over the agency upon becoming a controlling person as required by subdivision (a) of this section.</p> <p>(d) (1) Upon request of an applicant under this section, the commissioner, on behalf of the Public Health Council, may issue a determination that the taking of some control action or proposed control action by the applicant does not constitute the applicant becoming a controlling person of the operator of a licensed home care services agency as contemplated by this</p>					
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	<p>Part and that Public Health Council approval is not required.</p> <p>(2) The commissioner may revoke or modify his determination that an applicant is not or will not become a controlling person when, based on additional information or documentation not provided to the commissioner at the time of his initial determination, it is found that the applicant will exercise or has exercised control over the operator of a licensed home care services agency to the extent of directing or causing the direction of the actions, management or policies of the operator of such agency.</p> <p>(3) When the commissioner determines that a person will exercise or is exercising control over an operator or a licensed home care services agency as a controlling person, such person shall refrain from exercising or continuing to exercise such control until Public Health Council approval is obtained.</p>					
765-1.15	<p>Section 765-1.15 - Limitation on Transfer</p> <p>765-1.15 Limitation on transfer: Any transfer pursuant to section 765-1.12 or 765-1.13 of this Subpart shall be completed within 90 days of issuance by the Public Health Council of its approval for such transfer unless extended by the council, and the council shall be notified of the transfer within 10 days after completion. Any request for an extension of time shall set forth the reasons why such transfer could not be completed within the prescribed time. Failure to complete a transfer within the time prescribed or as extended by the council or failure to notify the council within the time prescribed shall constitute an abandonment and withdrawal of the application and any council approval.</p>					
765-2.1	<p>Section 765-2.1 - Issuance of a License</p> <p>765-2.1 Issuance of a license: (a) No home care services agency, other than those exempt from licensure requirements as provided in subdivision (c) of this section, shall provide nursing, home health aide or personal care services to persons in their home unless it has been approved by the Public Health Council and has been issued a license pursuant to the provisions of article 36 of the Public Health Law and this Part.</p>					

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	<p>(b) A license shall not be issued by the commissioner unless he finds that the agency's equipment, personnel, standards of care and provision of service are in compliance with article 36 of the Public Health Law and all applicable codes, rules and regulations.</p> <p>(c) The following are exempt from licensure under this Part and article 36 of the Public Health Law:</p> <p>(1) a certified home health agency, long term home health care program, AIDS home care program, or hospice to the extent of providing home care to its hospice patients;</p> <p>(2) an agency which provides personal care services or home care services exclusively to individuals pursuant to a program administered, operated or regulated by another State agency;</p> <p>(3) an organization licensed and operating exclusively as a nurses' registry pursuant to article 11 of the General Business Law;</p> <p>(4) sole practitioners of nursing licensed pursuant to article 139 of the Education Law; and</p> <p>(5) a medical facility, approved under article 28 of the Public Health Law, to provide chronic renal dialysis services, to the extent such facility provides chronic renal dialysis services to patients at home.</p> <p>-</p> <p>(d) The following criteria shall be used to determine whether an organization or group of individuals are subject to licensure as a home care services agency:</p> <p>(1) accountability for the services provided as evidenced by responsibility for:</p> <p>(i) making admission and discharge decisions;</p> <p>(ii) the provision of, or arranging for, patient care;</p>					
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	<p>(iii) the establishment of standards and policies relating to the provision of care; and</p> <p>(iv) determining charges for services provided;</p> <p>(2) employment relationship, if any, of the staff to the operational entity; and</p> <p>(3) extent and scope of service delivery and functions of staff.</p> <p>(e) An application for licensure as a home care services agency shall be made to the department on forms provided by the department.</p>					
765-2.2	<p>Section 765-2.2 - Amendment of a License</p> <p>765-2.2 Amendment of a license: (a) After issuance of an initial license, in order for the department to determine compliance with applicable statutes, rules and regulations, any licensed home care services agency seeking to add nursing, home health aide or personal care services shall submit an application to the department at least 90 days prior to the anticipated start of service and obtain written approval from the department prior to commencing the service. Such application shall be acted upon by the department within 90 days of receipt.</p> <p>(b) The operator of a licensed home care services agency shall submit to the department, in writing, a request for approval of any proposed change in the name of a business corporation, not-for-profit corporation, partnership, sole proprietor or governmental subdivision or initial use of or change in an assumed name of a business corporation, not-for-profit corporation, partnership, sole proprietor or governmental subdivision, at least ninety (90) days prior to the proposed name change.</p> <p>(1) Such request for approval shall include the following:</p> <p>(i) a photocopy of the executed proposed certificate of amendment of the certificate of incorporation or application for authority to conduct business</p>					

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	<p>in the State of New York, or a certificate or amended certificate of conducting business under an assumed name;</p> <p>(ii) the current and proposed names and an explanation of the nature of, and the reasons for, the requested name change; and</p> <p>(iii) such other pertinent information and documents necessary for the department's consideration, as requested.</p> <p>(2) The approval by the department of a proposed name or assumed name shall be withheld if the proposed name or assumed name indicates or implies that the corporation, partnership, governmental subdivision or individual is authorized to engage in activities for which it is not authorized, provide a level of care it is not authorized to provide, is misleading, causes confusion with the identity of another home care agency, or violates any provision of law.</p> <p>(c) After issuance of an initial license, a licensed home care services agency shall notify the department in writing at least 30 days prior to commencing or discontinuing physical therapy, occupational therapy, speech/language pathology, nutrition services, social work, respiratory therapy, physician services, or medical supplies, equipment and appliances.</p> <p>(d) A licensed home care services agency shall notify the department, in writing, of any proposed change in address or office site location at least 10 days prior to effecting such change.</p>					
765-2.3	<p>Section 765-2.3 - Discontinuation, Revocation, Suspension, Limitation or Annulment of a License</p> <p>765-2.3 Discontinuation, revocation, suspension, limitation or annulment of a license: (a) No licensed home care services agency shall discontinue operation of the agency, discontinue the provision of nursing, home health aide or personal care services or surrender its license unless 30 days' written notice of its intention to do so, and a plan for the continuation of</p>					

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	<p>care for the patients on its roster and a plan for maintenance and safekeeping of the patient records are provided to the commissioner and written approval obtained. Such plan shall include referral of patients in need of such services to an alternate provider, if available.</p> <p>(b) A home care services agency shall notify each patient concerned, the patient's family, and the patient's physician, if any, at least 30 days prior to the voluntary surrender of a license or as directed in an order of revocation, suspension, limitation or annulment.</p> <p>(c) A license of a home care services agency may be revoked, suspended, limited or annulled by the commissioner on proof that it has failed to comply with the provisions of article 36 of the Public Health Law or the rules and regulations promulgated thereunder.</p> <p>(d) No such license shall be revoked, suspended, limited, annulled or denied without a hearing. However, a license may be temporarily suspended or limited without a hearing for a period not in excess of 30 days upon written notice to the agency following a finding by the department that the public health or safety is in imminent danger.</p> <p>(e) The commissioner shall fix a time and place for the hearing. A copy of the charges, together with the notice of the time and place of the hearing, shall be served in person or mailed by registered or certified mail to the agency at least 21 days before the date fixed for the hearing. The agency shall file with the department not less than eight days prior to the hearing, a written answer to the charges.</p> <p>(f) All orders or determinations hereunder shall be subject to review as provided in article 78 of the Civil Practice Law and Rules. Application for such review must be made within 60 days after service in person or by registered or certified mail of a copy of the order or determination upon the application or agency.</p> <p>(g) A home care services agency license shall be promptly surrendered to the department when revoked, suspended, limited or annulled by the commissioner, or when the agency terminates services.</p>					
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766.1	<p>Section 766.1 - Patient Rights</p> <p>766.1 Patient rights: (a) The governing authority shall establish written policies regarding the rights of the patient and shall ensure the development of procedures implementing such policies. These rights, policies and procedures shall afford each patient the right to:</p> <p>(1) be informed of these rights, and the right to exercise such rights, in writing prior to the initiation of care, as evidenced by written documentation in the clinical record;</p> <p>(2) be given a statement of the services available by the agency and related charges;</p> <p>(3) be advised before care is initiated of the extent to which payment for agency services may be expected from any third party payors and the extent to which payment may be required from the patient.</p> <p>(i) The agency shall advise the patient of any changes in information provided under this paragraph or paragraph (2) of this subdivision as soon as possible, but no later than 30 calendar days from the date the agency becomes aware of the change.</p> <p>(ii) All information required by this paragraph shall be provided to the patient both orally and in writing;</p> <p>(4) be informed of all services the agency is to provide, when and how services will be provided, and the name and functions of any person and affiliated agency providing care and services;</p> <p>(5) participate in the planning of his or her care and be advised in advance of any changes to the plan of care;</p> <p>(6) refuse care and treatment after being fully informed of and understanding the consequences of such actions;</p>					
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	<p>(7) be informed of the procedures for submitting patient complaints;</p> <p>(8) voice complaints and recommend changes in policies and services to agency staff, the New York State Department of Health or any outside representative of the patient's choice. The expression of such complaints by the patient or his/her designee shall be free from interference, coercion, discrimination or reprisal;</p> <p>(9) submit patient complaints about the care and services provided or not provided and complaints concerning lack of respect for property by anyone furnishing service on behalf of the agency, to be informed of the procedure for filing such complaints, and to have the agency investigate such complaints in accordance with the provisions of subdivision (j) of section 766.9 of this Part. The agency is also responsible for notifying the patient or his/her designee that if the patient is not satisfied by the response the patient may complain to the Department of Health's Office of Health Systems Management;</p> <p>(10) be treated with consideration, respect and full recognition of his/her dignity and individuality; and</p> <p>(11) privacy, including confidential treatment of patient records, and to refuse release of records to any individual outside the agency except in the case of the patient's transfer to a health care facility, or as required by law or third-party payment contract.</p> <p>(b) The governing authority shall make all personnel providing patient care services on behalf of the agency aware of the rights of patients and the responsibility of personnel to protect and promote the exercise of such rights.</p> <p>(c) If a patient lacks capacity to exercise these rights, the rights shall be exercised by an individual, guardian or entity legally authorized to represent the patient.</p>					
766.2	Section 766.2 - Patient Service Policies and Procedures					

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	<p>766.2 Patient service policies and procedures: (a) The governing authority shall ensure for each health care service provided that:</p> <p>(1) written policies and procedures consistent with current professional standards of practice are developed and implemented for each service and are reviewed and revised as necessary;</p> <p>(2) that the delivery of each service is documented in the clinical record;</p> <p>(3) to the extent possible, services are provided by the same personnel to the same patient;</p> <p>(4) persons providing care in the home display proper and current identification, including name, title and current photograph of care provider and name of agency providing the service, to be returned to the agency upon termination of employment;</p> <p>(5) written policies and procedures for the storage, cleaning and disinfection of medical supplies, equipment and appliances are established;</p> <p>(6) professional staff evaluate the appropriateness, cleanliness and safety of equipment prescribed;</p> <p>(7) any nursing or therapeutic service, procedure or treatment not previously provided in homes by the agency is first reviewed by the quality improvement committee as described in section 766.9 of this Part before being provided routinely. If the needs of a patient require such a service, procedure or treatment, it may be implemented prior to review by the quality improvement committee if:</p> <p>(i) medical consultation has been obtained regarding safety and appropriateness; and</p> <p>(ii) staff have been trained to provide that specific service, procedure or treatment;</p>					
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	<p>(8) a discharge plan is initiated prior to agency discharge of the patient in order to assure a timely, safe and appropriate transition for the patient; and</p> <p>(9) a patient is discharged by the agency after notification of the authorized practitioner, as defined in subdivision (b) of section 766.4 of this Part, and consultation with the patient and any other professional staff involved in coordinating the plan of care, no less than 48 hours prior to patient discharge.</p> <p>(b) For purposes of this Part, health care services shall include nursing, home health aide services, personal care, physical therapy, occupational therapy, speech/language pathology, nutrition services, social work, respiratory therapy, physician services and medical supplies, equipment and appliances.</p>					
766.3	<p>Section 766.3 - Plan of Care</p> <p>766.3 Plan of care: The governing authority or operator shall ensure that:</p> <p>(a) all patients are accepted for health care services only after a determination has been made by a registered professional nurse or by an individual directly supervised by a registered professional nurse that the patient's needs can be safely and adequately met by the agency;</p> <p>(b) a plan of care is established for each patient based on a professional assessment of the patient's needs and includes pertinent diagnosis, prognosis, need for palliative care, mental status, frequency of each service to be provided, medications, treatments, diet regimens, functional limitations and rehabilitation potential;</p> <p>(c) orders for therapy services shall include the specific procedures and modalities to be used and the amount, frequency and duration of such services; and</p> <p>(d) the plan of care is reviewed and revised as frequently as necessary to reflect the changing care needs of the patient, but no less frequently than every six months;</p>					

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	(1) each review shall be documented in the clinical record; and (2) agency professional personnel shall promptly alert the patient's authorized practitioner and other affected care providers to any significant changes in the patient's condition that indicate a need to alter the plan of care					
766.4	<p>Section 766.4 - Medical Orders</p> <p>766.4 Medical orders: (a) The governing authority or operator shall ensure that an order from the patient's authorized practitioner is established and documented for the health care services the agency provides to those patients who:</p> <p>(1) are being actively treated by an authorized practitioner for a diagnosed health care problem;</p> <p>(2) have a health care need or change in physical status requiring medical intervention; or</p> <p>(3) are home health aide or personal care services patients of a certified home health agency.</p> <p>(b) For purposes of this Part, authorized practitioner shall refer to a doctor of medicine, a doctor of osteopathy, a doctor of podiatry, a licensed midwife or a nurse practitioner authorized under federal and state law and applicable rules and regulations to provide medical care and services to the patient except as may be limited by third party contract.</p> <p>(c) Such orders shall be reviewed and revised as the needs of the patient dictate but no less frequently than every six months, except where an authorized practitioner, as part of an authorization, orders personal care services for up to one year for a Medicaid patient.</p> <p>(d) Medical orders shall reference all diagnoses, medications, treatments, prognoses, need for palliative care, and other pertinent patient information relevant to the agency plan of care; and</p>					

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	(1) shall be authenticated by an authorized practitioner within 12 months after admission to the agency; and (2) when changes in the patient's medical orders are indicated, orders, including telephone orders, shall be authenticated by the authorized practitioner within 12 months					
766.5	<p>Section 766.5 - Clinical Supervision</p> <p>766.5 Clinical supervision: The governing authority shall ensure for all health care services that:</p> <p>(a) sufficient numbers of appropriately trained and oriented supervisory staff are available to ensure the quality of patient care services provided by the agency. Such supervision shall include:</p> <p>(1) ongoing review of cases and delegation of assignments by appropriate health care professionals;</p> <p>(2) in-home visits to direct, demonstrate and evaluate the delivery of patient care;</p> <p>(3) provision of clinical consultation; and</p> <p>(4) professional consultation on agency policies and procedures;</p> <p>(b) all staff delivering care in patient homes are adequately supervised. The department shall consider the following factors as evidence of adequate supervision:</p> <p>(1) staff regularly provide services at the times and frequencies specified in the patient's plan of care and in accordance with the policies and procedures of their respective services;</p> <p>(2) staff are assigned to the care of patients in accordance with their licensure, and their training, orientation, and demonstrated skills;</p>					

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	<p>(3) clinical records are kept complete and changes in patient condition, adverse reactions, and problems with informal supports or home environment are charted promptly and reported to supervisory staff; and</p> <p>(4) plans of care are revised as needed and changes are reported to the patient's authorized practitioner, other staff providing care to the patient, and other agencies which authorize payment for services, as appropriate and necessary;</p> <p>(c) home health aides or personal care aides are supervised, as appropriate, by a registered professional nurse or licensed practical nurse, or a therapist if the aide carries out simple procedures as an extension of physical therapy, occupational therapy or speech/language pathology; and</p> <p>(d) in-home supervision by professional staff of home health aides and personal care aides occurs:</p> <p>(1) to demonstrate to and instruct the aide in the treatments or services to be provided with successful demonstration by the aide during the initial service visit or where there is a change in personnel providing care, if the aide does not have documented training and experience in performing the tasks prescribed in the plan of care;</p> <p>(2) where any of the conditions set forth in paragraph (3) of subdivision (b) of this section occur, to evaluate the condition and initiate any revision in the plan of care which may be needed; and</p> <p>(3) to instruct the aide as to the observations and written reports to be made to the supervising nurse or therapist.</p>					
766.6	<p>Section 766.6 - Patient Care Record</p> <p>766.6 Patient care record: (a) The agency shall maintain a confidential record for each patient admitted to care to include:</p> <p>(1) identifying patient data;</p> <p>(2) medical orders, if applicable;</p>					

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	<p>(3) nursing assessments conducted to provide services;</p> <p>(4) an individualized plan of care;</p> <p>(5) signed and dated progress notes following each patient visit or phone contact by all professional personnel providing care which include a summary of patient status and response to the plan of care and any contacts with family, informal supports and other community resources that are relevant to the patient's condition and treatment;</p> <p>(6) supervisory reports of the registered professional nurse, licensed practical nurse or the therapist, if applicable, of the home health aide or personal care aide;</p> <p>(7) observations and reports made to the registered professional nurse, licensed practical nurse or therapist by the home health aide or personal care aide, including activity sheets;</p> <p>(8) documentation of accidents and incidents;</p> <p>(9) documentation of the patient's receipt of information regarding his/her rights; and</p> <p>(10) a discharge summary when the patient is discharged from the agency including:</p> <p>(i) documentation of discharge planning preparation;</p> <p>(ii) notification to the patient's authorized practitioner;</p> <p>(iii) reasons for discharge and date of discharge;</p> <p>(iv) summary of care given and patient's progress;</p> <p>(v) patient status upon discharge including a description of any remaining needs for patient care and supportive services;</p>					
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	<p>(vi) patient or family ability to self-manage in relation to any remaining problems; and</p> <p>(vii) recommendations and referral for any follow-up care, if needed.</p> <p>(b) Each patient's record shall be kept securely for not less than six years after discharge from the licensed home care services agency and available to the department upon request.</p> <p>(c) In the case of minors, records are to be kept for not less than six years after discharge, or three years after they reach majority (18 years), whichever is the longer period.</p> <p>(d) In the event that an agency discontinues operation for any reason, the governing authority, immediately preceding the discontinuance of the operation, shall make effective arrangements to maintain, store, assure access to and make available to the patient and the department upon request, all clinical records for a period consistent with the requirements of subdivisions (b) and (c) of this section. The governing authority shall notify the department in writing as to where the clinical records will be stored and how they will be made available to former patients.</p> <p>(e) Each agency shall maintain written policies and procedures which:</p> <p>(1) safeguard clinical records against loss or unauthorized access; and</p> <p>(2) govern use, removal and release of information.</p>					
766.9	<p>Section 766.9 - Governing Authority</p> <p>766.9 Governing authority: The governing authority or operator, as defined in Part 700 of this Title, of a licensed home care services agency shall:</p> <p>(a) be responsible for the management and operation of the agency;</p> <p>(b) ensure compliance of the home care services agency with all applicable Federal, State and local statutes, rules and regulations;</p>					

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	<p>(c) ensure the development of a written emergency plan which is current and includes procedures to be followed to assure health care needs of patients continue to be met in emergencies that interfere with delivery of services, and orientation of all employees to their responsibilities in carrying out such a plan;</p> <p>(d) adopt and approve amendments to written policies regarding the management and operation of the home care services agency and the provision of health care services;</p> <p>(e) make available to the public information concerning the services which it offers, the geographic area in which these services are made available, the charges for the various types of service and the payment mechanisms which may be available for such services;</p> <p>(f) provide an office facility or facilities equipped and sufficient in size to permit the efficient conduct of business including access to patient records by all professional staff providing care and prompt telephone contact to and from patients, referral agencies or facilities, and other home care services agencies;</p> <p>(g) employ or contract for a sufficient number of staff to coordinate, direct and deliver services to patients accepted for care in accordance with prevailing standards of professional practice;</p> <p>(h) employ at least one licensed and currently registered professional nurse whose educational and experiential qualifications are deemed appropriate by the employing agency for the duties assigned, to be responsible for the direction and supervision of all patient care services and other health care activities of the agency;</p> <p>(i) accept and retain for services only those persons whose health care needs can be safely and adequately met by the agency according to criteria specified in written agency policies;</p>					
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	<p>(j) ensure the development and implementation of a patient complaint procedure to include:</p> <p>(1) documentation of receipt, investigation and resolution of any complaint, including the maintenance of a complaint log indicating the dates of receipt and resolution of all complaints received by the agency;</p> <p>(2) review of each complaint with a written response to all written complaints and to oral complaints, if requested by the individuals making the oral complaint:</p> <p>(i) explaining the complaint investigation findings and the decisions rendered to date by the agency within 15 days of receipt of such complaint; and</p> <p>(ii) advising the complainant of the right to appeal the outcome of the agency's complaint investigation and the appeal procedure to be followed;</p> <p>(3) an appeals process with review by a member or committee of the governing authority within 30 days of receipt of the appeal; and</p> <p>(4) notification to the patient or his or her designee that if the patient is not satisfied by the agency's response, the patient may complain to the Department of Health's Office of Health Systems Management;</p> <p>(k) ensure continuous quality improvement initiatives, by establishing and maintaining a coordinated quality assessment and improvement program which integrates the review activities of all home care programs and services to enhance the quality of care and treatment. Quality improvement shall be the responsibility of all staff, at every level, at all times. Supervisory personnel alone cannot ensure quality of care and services. Such quality must be part of each individual's approach to his or her daily responsibilities;</p> <p>(l) appoint a quality improvement committee to establish and oversee standards of care. The quality improvement committee shall consist of a consumer and appropriate health professional persons. The committee</p>					
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	<p>shall meet at least four times a year to:</p> <p>(1) review policies pertaining to the delivery of the health care services provided by the agency and recommend changes in such policies to the governing authority for adoption;</p> <p>(2) conduct a clinical record review of the safety, adequacy, type and quality of services provided which includes:</p> <p>(i) random selection of records of patients currently receiving services and patients discharged from the agency within the past three months; and</p> <p>(ii) all cases with identified patient complaints as specified in subdivision (j) of this section;</p> <p>(3) prepare and submit a written summary of review findings to the governing authority for necessary action; and</p> <p>(4) assist the agency in maintaining liaison with other health care providers in the community.</p> <p>(o) Health Provider Network Access and Reporting Requirements. The governing authority or operator of an agency shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each agency that it operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each agency in the HPN Communications Directory. A policy defining the agency's HPN coverage consistent with the agency's hours of operation shall be created and reviewed by the agency no less than annually. Maintenance of each agency's HPN accounts shall consist of, but not be limited to, the following:</p> <p>(1) sufficient designation of the agency's HPN coordinator(s) to allow for HPN individual user application;</p>					
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	<p>(2) designation by the governing authority or operator of an agency of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;</p> <p>(3) adherence to the requirements of the HPN user contract; and</p> <p>(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.</p>					
766.10	<p>Section 766.10 - Contracts</p> <p>766.10 Contracts: (a) The governing authority or operator may enter into contracts with individuals, organizations, agencies and facilities when necessary, to obtain or provide patient care services.</p> <p>(b) No licensed home care service may be provided by arrangement without a written contract which specifies:</p> <p>(i) services to be provided,</p> <p>(ii) manner in which services will be supervised and evaluated,</p> <p>(iii) charges and other financial arrangements; and</p> <p>(iv) any provisions made for indemnification between the agency and the contract providers.</p> <p>(c) Contract personnel shall meet the personnel requirements as set forth in section 766.11 of this Part, which can be verified by written documented evidence and examined by the agency and the department.</p> <p>(d) Contractual arrangements pursuant to subdivision (a) of this section, shall not diminish the licensed home care services agency's responsibility for maintaining adequacy of services provided by the agency and shall specify the following terms and conditions:</p>					

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	<p>Notwithstanding any other provisions in this contract, the licensed home care services agency remains responsible for:</p> <p>(1) ensuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, State and local statutes, rules and regulations;</p> <p>(2) ensuring the quality of all services provided by the agency; and</p> <p>(3) ensuring adherence by agency staff to the agency plan of care established for patients.</p> <p>(e) Nurses or therapists providing care and service under individual contract with the agency or as personnel of another contracted agency shall maintain liaison to assure that care planning and service delivery provided by such individuals are coordinated, supervised and integrated effectively into the patient services responsibilities required by this Part;</p> <p>(f) If the licensed home care services agency contracts to provide personal care services with a local social services district, the physician's orders and nursing and social assessment may, pursuant to the contract and consistent with the provisions set forth in this Part, be maintained by the local social services district purchasing the services, provided that the local social services district furnishes such written documentation and information, including copies of the physician's orders and nursing assessment, and access to its staff, as may be required by the department or by the licensed agency to assure compliance with applicable statutes, rules and regulations. Nothing herein shall be construed to diminish the responsibilities of the local social services district under applicable State or Federal statutes, rules and regulations.</p> <p>(g) If a licensed home care services agency contracts with a certified home health agency, long term home health care program, AIDS home care program or hospice, to provide personal care or home health aide services, the patient assessment, plan of care, clinical record entries, supervision of such services and the obtaining of medical orders may, pursuant to the contract and consistent with the provisions set forth in this</p>					
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	<p>Part, be conducted and documentation maintained by the agency purchasing the service, provided that the certified home health agency, long term home health care program, AIDS home care program or hospice, furnishes such written documentation and information and access to its staff, as required by the licensed agency, to permit the licensed home care services agency to assure compliance by its employees with applicable statutes, rules and regulations.</p> <p>(h) If a licensed home care services agency contracts with a certified home health agency, the administrative and general costs of such licensed home care services agency shall not exceed the annual statewide average administrative and general limitation applied to certified home health agencies in accordance with subdivision (7) of section 3614 of the public health law</p>					
766.11	<p>Section 766.11 - Personnel</p> <p>766.11 Personnel: The governing authority or operator shall ensure for all health care personnel:</p> <p>(a) the development and implementation of written personnel policies and procedures, which are reviewed at least annually and revised as necessary;</p> <p>(b) (1) that qualifications for home health aide and personal care aide as specified in section 700.2 of this Title are met; and</p> <p>(2) that the information required by Public Health Law section 3613(3)(a)-(f) has been entered into the home care services worker registry in accordance with Part 403 of this Title.</p> <p>(c) that the health status of all new personnel is assessed and documented prior to assuming patient care duties. The assessment shall be of sufficient scope that no person shall assume his/her duties unless he/she is free from a health impairment which is of potential risk to the patient or which might interfere with the performance of his/her duties, including the habituation or addiction to depressants, stimulants, narcotics,</p>					

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	<p>alcohol or other drugs or substances which may alter the individual's behavior;</p> <p>(d) that a record of the following tests, examinations or other required documentation is maintained for all personnel who have direct patient contact:</p> <p>(1) a certificate of immunization against rubella which means:</p> <p>(i) a document prepared by a physician, physician assistant, specialist assistant, nurse practitioner, licensed midwife or a laboratory possessing a laboratory permit issued pursuant to Part 58 of this Title, demonstrating serologic evidence of rubella antibodies; or</p> <p>(ii) a document indicating one dose of live virus rubella vaccine was administered on or after the age of twelve months, showing the product administered and the date of administration, and prepared by the health practitioner who administered the immunization; or</p> <p>(iii) a copy of the document described in subparagraph (i) or (ii) of this paragraph which comes from a previous employer or the school which the individual attended as a student;</p> <p>(2) a certificate of immunization against measles for all personnel born on or after January 1, 1957, which means:</p> <p>(i) a document prepared by a physician, physician assistant, specialist assistant, nurse practitioner, licensed midwife or a laboratory possessing a laboratory permit issued pursuant to Part 58 of this Title, demonstrating serologic evidence of measles antibodies; or</p> <p>(ii) a document indicating two doses of live virus measles vaccine were administered with the first dose administered on or after the age of 12 months and the second dose administered more than 30 days after the first dose but after 15 months of age showing the product administered and the date of administration, and prepared by the health practitioner who administered the immunization; or</p>					
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	<p>(iii) a document indicating a diagnosis of the person as having had measles disease prepared by the physician, physician assistant, specialist assistant, licensed midwife or nurse practitioner who diagnosed the person's measles; or</p> <p>(iv) a copy of the document described in subparagraph (i), (ii), or (iii) of this paragraph which comes from a previous employer or the school which the person attended as a student;</p> <p>(3) a written statement, if applicable, from any licensed physician, physician assistant, specialist assistant, licensed midwife or nurse practitioner, which certifies that immunization with measles and/or rubella vaccine may be detrimental to the person's health. The requirements of paragraphs (1) and (2) of this subdivision relating to measles and/or rubella immunization shall be inapplicable until such immunization is found no longer to be detrimental to such person's health. The nature and duration of the medical exemption must be stated in the individual's personnel record and must be in accordance with generally accepted medical standards (for example, the recommendations of the American Academy of Pediatrics and the Immunization Practices Advisory Committee of the U.S. Department of Health and Human Services);</p> <p>(4) either tuberculin skin test or Food and Drug Administration (FDA) approved blood assay for the detection of latent tuberculosis infection, prior to assuming patient care duties and no less than every year thereafter for negative findings. Positive findings shall require appropriate clinical follow up but no repeat tuberculin skin test or blood assay. The agency shall develop and implement policies regarding follow-up of positive test results; and</p> <p>(5) an annual, or more frequent if necessary, health status assessment to assure that all personnel are free from any health impairment that is of potential risk to the patient, family or to employees or that may interfere with the performance of duties;</p> <p>(6) documentation of vaccination against influenza, or wearing of a</p>					
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	<p>surgical or procedure mask during the influenza season, for personnel who have not received the influenza vaccine for the current influenza season, pursuant to section 2.59 of this Title.</p> <p>(e) that personal identification is produced by each applicant and verified by the agency prior to retention of an applicant by the agency;</p> <p>(f) (i) that prior to patient contact, employment history from previous employers, if applicable, and recommendations from other persons unrelated to the applicant if not previously employed, are verified; and</p> <p>(ii) a criminal history record check to the extent required by Part 402 of this Title.</p> <p>(g) that personnel records include verifications of employment history and qualifications for the duties assigned and, as appropriate, signed and dated applications for employment; records of professional licenses and registrations; records of physical examinations and health status assessments; performance evaluations; dates of employment, resignations, dismissals, and other pertinent data provided that all documentation and information pertaining to an employee's medical condition or health status, including such records of physical examinations and health status assessment shall be maintained separate and apart from the non-medical personnel record information and shall be afforded the same confidential treatment given patient medical records under section 766.6 of this Part; (h) that time and payment records are kept for all personnel;</p> <p>(i) that all personnel receive orientation to the policies and procedures of the home care services agency operation and in-service education necessary to perform his/her responsibilities. At a minimum:</p> <p>(1) home health aides must participate in 12 hours of in-service education per year; and</p> <p>(2) personal care aides must participate in six hours of in-service education per year;</p>					
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<p>(j) that there is a current written job description for each position which delineates responsibilities and specific education and experience requirements; and</p> <p>(k) that an annual assessment of the performance and effectiveness of all personnel is conducted including at least one in-home visit to observe performance, if applicable.</p> <p>(l)(1) that a program is implemented and enforced for the prevention of circumstances which could result in an employee or patient/client becoming exposed to significant risk body substances which could put them at significant risk of HIV or other blood-borne pathogen infection during the provision of services, as defined in sections 63.1 and 63.9 of this Title. Such a program shall include:</p> <p>(i) use of scientifically accepted protective barriers during job-related activities which involve, or may involve, exposure to significant risk body substances. Such preventive action shall be taken by the employee with each patient/client and shall constitute an essential element for the prevention of bi-directional spread of HIV or other blood-borne pathogen;</p> <p>(ii) use of scientifically accepted preventive practices during job-related activities which involve the use of contaminated instruments or equipment which may cause puncture injuries;</p> <p>(iii) training at the time of employment and yearly staff development programs on the use of protective equipment, preventive practices, and circumstances which represent a significant risk for all employees whose job-related tasks involve, or may involve, exposure to significant risk body substances;</p> <p>(iv) provision of personal protective equipment for employees which is appropriate to the tasks being performed;</p> <p>(v) a system for monitoring preventive programs to assure compliance and safety.</p>					
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	<p>(2) that a policy/procedure is implemented and enforced for the management of individuals who are exposed to significant risk body substances under circumstances which constitute significant risk of transmitting or contracting HIV or other blood-borne pathogen infection. The policy/procedure shall include:</p> <p>(i) a system for reporting to a designated individual in the agency exposure thought to represent a circumstance which constitutes significant risk of transmitting or contracting HIV or other blood-borne pathogen infection;</p> <p>(ii) evaluation of the circumstances of a reported exposure and services for providing follow-up of the exposed individual which includes:</p> <p>(a) medical and epidemiological assessment of the individual who is the source of the exposure, where that individual is known and available;</p> <p>(b) if indicated epidemiologically, HIV or other blood-borne pathogen counseling and voluntary testing of the source individual. Disclosure of the HIV status of the source individual can be made with the express written consent of the protected individual, or a person authorized pursuant to law to consent to health care for the protected individual if such person lacks capacity to consent, or pursuant to court order, if the HIV status is not known to the exposed individual;</p> <p>(c) appropriate medical follow-up of the exposed individual; and</p> <p>(iii) assurances for protection of confidentiality for those involved in reported exposures.</p>					
766.12	<p>Section 766.12 - Records and Reports</p> <p>766.12 Records and reports: (a) The governing authority or operator shall ensure the prompt submission of all records and reports required by the department and that:</p> <p>(1) copies of the following records are retained on file at the principal</p>					

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	<p>administrative office in New York State of the home care services agency and available to the department upon request:</p> <p>(i) the license issued by the department to operate as a home care service agency;</p> <p>(ii) the certificate of incorporation and any amendments thereto, if applicable;</p> <p>(iii) partnership agreement, if applicable;</p> <p>(iv) certificate of doing business under an assumed name, if applicable;</p> <p>(v) contracts and other agreements related to delivery of patient care entered into by the operator;</p> <p>(vi) rules and bylaws of the governing authority and quality assurance committees, if applicable;</p> <p>(vii) current written operating policies and procedures;</p> <p>(viii) a current patient roster; and</p> <p>(ix) listing of all personnel;</p> <p>(2) copies of the following records are retained on file at each branch office of the home care services agency:</p> <p>(i) the agency's policies and procedures;</p> <p>(ii) a listing of all of the branch office's personnel; and</p> <p>(iii) a current patient roster of all patients receiving care from the branch office and a copy of the patient care record of each such patient;</p> <p>(3) at a minimum, the following reports and records are retained by the home care services agency and available to the department upon request:</p>					
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	<p>(i) minutes of the meetings of the governing authority and the committees thereof which shall be retained for three years from the date of the meeting;</p> <p>(ii) records of all financial transactions directly related to delivery of patient care which shall be retained three years from the date of the transaction;</p> <p>(iii) personnel records, which shall be retained three years from the date of employee termination or resignation;</p> <p>(iv) records of grievances and complaints which shall be retained for three years from the date of resolution;</p> <p>(v) all records related to patient care and services; and</p> <p>(vi) any other records required to be kept by this Part or Part 765.</p> <p>(b) All records required by subdivision (a) of the section to be retained shall be maintained in hard copy or electronic form. If electronic storage is maintained, such records shall:</p> <p>(1) be secure from unwarranted access;</p> <p>(2) have confidentially protected, when appropriate; and</p> <p>(3) be immediately available to the agency and the department in hard copy format upon request.</p> <p>(c) The home care services agency shall furnish annually to the department a copy of:</p> <p>(1) statistical summaries of all health care services, including the type, frequency and reimbursement for services provided, including reimbursement from federal and state governmental agencies, on forms provided by the department;</p>					
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	<p>(2) if a for-profit corporation, a list of the principal stockholders and the number and percent of the total issued and outstanding shares of the corporation held by each, duly certified by the secretary of the corporation as to completeness and accuracy;</p> <p>(3) if a not-for-profit corporation, a list of directors, officers and corporate members, if such members number 10 or fewer; and</p> <p>(4) other such records and reports as may be legally required by the department.</p> <p>(d) The agency shall furnish simultaneously to the department copies of all notices and documents required to be filed with the Securities and Exchange Commission.</p>					
402.1	<p>Section 402.1 Background and Intent</p> <p>402.1 Background and intent: (a) Chapter 769 of the Laws of 2005, as amended by Chapters 331 and 673 of the Laws of 2006, imposed the requirement for review of the criminal history record of certain prospective employees of residential health care facilities licensed under Article 28 of the Public Health Law and certified home health agencies, licensed home care services agencies or long term home health care programs certified, licensed, or authorized under Article 36 of the Public Health Law who are hired or used on or after September 1, 2006 and who will provide direct care or supervision to patients, residents or clients of such providers.</p> <p>(b) This legislation was intended to enable such providers to secure appropriate individuals to staff their facilities and programs, by utilizing criminal history information concerning individuals seeking employment.</p> <p>(c) The purpose of this Part is to establish standards and procedures for such criminal history record checks.</p>					
402.2	<p>Section 402.2 Applicability</p> <p>402.2 Applicability: This part shall apply to every residential health care</p>					

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	facility which is licensed under Article 28 of the Public Health Law, and any certified home health agency, licensed home care services agency or long term home health care program certified, licensed or authorized under Article 36 of the Public Health Law, to provide services to patients, residents or clients					
402.3	<p>Section 402.3 Definitions.</p> <p>402.3 Definitions: For purposes of this Part, the following terms shall have the following meanings.</p> <p>(a) "Authorized person" means each individual designated by a provider who is authorized to request, receive and review criminal history information in accordance with this Part.</p> <p>(b) "Commissioner" means the Commissioner of the New York State Department of Health.</p> <p>(c) "Criminal history information" means a record of pending New York State criminal charges, New York State criminal convictions which have not been vacated or reversed, information from the Federal Bureau of Investigation (FBI) obtained as a result of a national criminal history record check, and certificates of relief from disabilities or certificates of good conduct filed pursuant to subdivision two of section seven hundred five of the Correction Law and which the Division is required to maintain pursuant to subdivision (6) of section 837 of the Executive Law.</p> <p>(d) "Criminal conviction" means a judgment or sentence for a charge of a felony or misdemeanor under New York State law or a comparable crime under any other jurisdiction.</p> <p>(e) "Department" means the New York State Department of Health.</p> <p>(f) "Determination" means the decision made by the Department after reviewing criminal history information to approve or disapprove a prospective employee's eligibility for employment by a provider.</p>					

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<p>(g) "Division" means the New York State Division of Criminal Justice Services.</p> <p>(h) "Permanent record" means a permanent, written record of a determination and the criminal history information maintained by the Department.</p> <p>(i) "Employee in direct care and supervision" means</p> <p>(2) any unlicensed person employed by or used by a certified home health agency, licensed home health care program or long term home health care services program pursuant to Article 36 of the Public Health Law, providing face-to-face care following the professional or paraprofessional plan of care developed for the individual patient in accordance with section 766.3 of this Title.</p> <p>(j) "Prospective employee" means any person to be employed or used by a provider beginning on or after September 1, 2006 including those persons provided by a temporary employment agency, to provide direct care or supervision to patients, residents or clients, and whom the provider reasonably expects to hire, employ or use. Persons licensed pursuant to Title 8 of the Education Law or Article 28-D of the Public Health Law are excluded from the meaning of the term. Such term shall not include volunteers.</p> <p>(k) "Provider" means any residential health care facility licensed under Article 28 of the Public Health Law; or any certified home health agency, licensed home care services agency or long term home health program licensed, certified, or authorized under Article 36 of the Public Health Law.</p> <p>(l) "Subject individual" means a person for whom a provider is authorized to request a check of criminal history information pursuant to section 845-b of the Executive Law, Article 28-E of the Public Health Law, and this Part.</p> <p>(m) "Temporary employee" means a prospective employee who has been temporarily approved by a provider for employment after a request for a</p>						
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	criminal history record check and pending a determination by the Department					
402.4	<p>Section 402.4 General Requirements</p> <p>402.4 General Requirements: (a)(1) Each provider shall assure that criminal history information is requested, received, reviewed, and acted upon in a timely manner. Each provider shall designate one authorized person or, when necessary to assure compliance with this Part more authorized persons, and shall submit the name, position, and contact information for each authorized person to the Department in the form and format required by the Department.</p> <p>(2) A provider may request the designation of more authorized persons, as provided for in paragraph (1) of this subdivision, with the basis for such request. The Department shall determine the reasonableness of such request weighing the need for maintaining confidentiality of the criminal history information against the provider's administration of criminal history record checks.</p> <p>(b) Each provider shall develop and implement written policies and procedures related to conducting criminal history record checks. Such policies and procedures shall include criteria for:</p> <p>(1) determining whether a particular prospective employee is subject to a criminal history record check;</p> <p>(2) protecting the safety of persons receiving services from temporary employees as follows:</p> <p>(ii) Certified home health agencies, licensed home care service agencies, and long term home health care programs shall provide appropriate direct observation and evaluation of the temporary employee by utilizing an individual employed by such provider with a minimum of one year's experience working in a provider certified, licensed or approved under Article 36 of the Public Health Law. Such observation and evaluation shall occur on a weekly basis provided, however, that such direct observation</p>					

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<p>and evaluation shall occur on-site in the home the first week by a licensed health care professional, senior aide or other paraprofessional who meets the one-year requirement of employment in home care and at least once every other week thereafter by an individual meeting the minimum one-year experience as set forth in this subparagraph. On alternate weeks direct observation and evaluation may be on-site in the home or by phone call to the patient or the patient's representative. The results of such observations shall be documented in the temporary employee's personnel file and shall be maintained.</p> <p>(iii) If the temporary employee is working under contract with another provider certified, licensed or approved under Article 36 of the Public Health Law, such contract provider's appropriate direct observation and evaluation of the temporary employee, as described in this sub-paragraph, shall be considered sufficient for the purposes of complying with this paragraph. The results of such observations shall be documented in the temporary employee's personnel file and shall be maintained.</p> <p>(3) providing notice to the Department when a person ceases to be a subject individual since the person is no longer employed or used by the provider or such person's job duties no longer meet the definition of employee set forth in Section 402.3(i) of this Title to provide direct care or supervision to patients, residents, or clients of the provider in the form, format and manner required by the Department.</p> <p>(c) No person who has been fingerprinted pursuant to this Part, whose fingerprints remain on file with the Division, shall be required to undergo fingerprinting for purposes of a new criminal history record check required by this Part.</p> <p>(d) Nothing in this Part shall be construed or interpreted to in any way diminish the integrity of any collective bargaining agreement negotiated on or before April 1, 2005 between a provider and any certified or authorized collective bargaining agent for employees, or to diminish rights which accrue to such employees pursuant to such agreements.</p> <p>(e) No provider shall seek, directly or indirectly, to obtain from a</p>					
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	prospective employee, temporary employee or employee compensation in any form for the payment of the fees or any provider or facility costs associated with obtaining the criminal history record check required by this Part.					
402.5	<p>Section 402.5 Requirements Before Submitting a Request for a Criminal History Record Check</p> <p>402.5 Requirements before submitting a request for a criminal history record check: (a) To the extent permitted by law, a provider shall request from a prospective employee a sworn statement disclosing any prior finding of patient or resident abuse, or a criminal conviction in this State or any other jurisdiction. Providers shall evaluate such statements in all hiring decisions, including any temporary employment allowed under this Part.</p> <p>(b) The provider shall inform the subject individual in writing that:</p> <p>(1) the provider is required to request a check of his or her criminal history information and review the results of such criminal history record check; and</p> <p>(2) the subject individual has the right to obtain, review and seek correction of his or her criminal history information pursuant to rules and regulations established by the Division and the FBI.</p> <p>(c) The provider shall obtain the signed, informed consent of the subject individual in the form and format specified by the Department which indicates that the subject individual has:</p> <p>(1) been informed of the right and procedures necessary to obtain, review and seek correction of his or her criminal history information;</p> <p>(2) been informed of the reason for the request for his or her criminal history information;</p> <p>(3) consented to the request for a criminal history record check; and</p>					

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	(4) supplied on the form a current mailing or home address. (d) A subject individual may withdraw his or her application for employment, without prejudice, at any time before employment is offered or declined, regardless of whether the subject individual or provider has reviewed the summary of the subject individual's criminal history information					
402.6	<p>Section 402.6 Criminal History Record Check Process</p> <p>402.6 Criminal history record check process: (a) The provider shall ensure the submission of a request for a criminal history record check for each prospective employee. If a permanent record does not exist for the prospective employee, the Department shall be authorized to request and receive criminal history information from the Division concerning the prospective employee in accordance with the provisions of section 845-b of the Executive Law. Access to and the use of such information shall be governed by the provisions of such section of the Executive Law. The Division is authorized to submit fingerprints to the FBI for a national criminal history record check.</p> <p>(b) A provider requesting a criminal history record check pursuant to this Part shall do so by completing and submitting a form developed and provided by the Department after consultation with the Division and transmitting two sets of fingerprints to the Department. An authorized person, and only an authorized person, shall complete such form and shall submit the original with the authorized person's signature (not a facsimile signature) and two sets of fingerprints to the Department not more than ten days (excluding Saturdays, Sundays and legal holidays) after taking the fingerprints of the prospective employee. The Department shall maintain such form, in the form and format prescribed by the Department, which:</p> <p>(1) identifies the name of each person for whom the provider requests a criminal record check, and attests that each such person is a prospective employee of the provider, and, as such, the person is a subject individual, as defined in this Part;</p>					

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	<p>(2) identifies the specific duties of the subject individual which qualify the provider to request a check of the subject individual's criminal history information;</p> <p>(3) attests that the results of the criminal history record check will be used by the provider solely for the purposes authorized by law; and</p> <p>(4) attests that the provider, its agents, and employees are aware of and will abide by the confidentiality requirements and all other provisions of Public Health Law Article 28-E and Executive Law section 845-b, as they may from time to time be amended.</p> <p>(c)(1) In obtaining fingerprints as required by this Part, the provider shall require that the prospective employee present two forms of identification. One form shall be a government-issued identification containing the prospective employee's signature. Examples of such identification are a valid driver's license or a Department of Motor Vehicle ID, a current passport, valid military identification or valid school identification. At least one of the two forms of identification shall have a photograph of the prospective employee.</p> <p>(2) If an external entity is used by the provider to obtain fingerprints, the provider shall ensure that the external entity shall require two of the forms of identification listed in paragraph (1) of this subdivision and that the external entity completes its part of the Department form and returns the fingerprints and the Department form required by this section only to the provider.</p> <p>(3) If a fingerprint form is rejected by the division or the FBI the provider shall resubmit new prints within 14 days of notice from the Department of the rejection.</p> <p>(d) A provider may temporarily approve a prospective employee while the results of the criminal history record check are pending. The provider shall implement the supervision requirements identified in section 402.4 of this Part, applicable to the provider, during the period of temporary</p>					
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	<p>employment.</p> <p>(e) For subject individuals who have had a previous criminal history record check and determination issued by the Department, or for whom a criminal history record check has been submitted to the Department and a determination is pending, the provider shall submit a request for an expedited review in lieu of a regular submission provided for in this Part in the form, format and manner required by the Department. If the Department finds that an expedited request is not warranted, the Department will inform the authorized party that a regular submission is required, including fingerprints, so that a new criminal history record check can be conducted.</p>					
402.7	<p>Section 402.7 Department Criminal History Review</p> <p>402.7 Department criminal history review: (a) After reviewing a criminal history record of an individual who is subject to a criminal history record check pursuant to this Part, the Department and the provider shall take the following actions:</p> <p>(1) Where a prospective employee of a provider has no criminal history information, the Department shall promptly advise the provider that the Department will not issue a disapproval for employment, is not directing the provider to issue a disapproval, and the provider may act on the application in its own discretion.</p> <p>(2) Where the criminal history information of a prospective employee reveals a felony conviction at any time for a sex offense, a felony conviction within the past ten years involving violence, or a conviction for endangering the welfare of an incompetent or physically disabled person pursuant to section 260.25 of the Penal Law, or where the criminal history information concerning such prospective employee reveals a conviction at any time of any class A felony, a conviction within the past ten years of any class B or C felony, any class D or E felony defined in articles 120, 130, 155, 160, 178 or 220 of the Penal Law or any crime defined in sections 260.32 or 260.34 of the Penal Law or any comparable offense in any other jurisdiction, the Department shall propose disapproval of such person's eligibility for employment unless the Department determines, in</p>					

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	<p>its discretion, that the prospective employee's employment will not in any way jeopardize the health, safety or welfare of patients, residents or clients of the provider.</p> <p>(i) The Department shall provide to the provider and the prospective employee, in writing, a summary of the criminal history information along with the notification identified in this paragraph. Upon the provider's receipt from the Department of a notification of proposed disapproval of eligibility for employment, the provider shall not allow the prospective employee to provide direct care or supervision to patients, residents, or clients of such provider until receipt of a final determination of eligibility for employment from the Department.</p> <p>(ii) In cases where the Department determines that the prospective employee's employment will not in any way jeopardize the health, safety or welfare of patients, residents or clients of the provider and therefore neither issues a disapproval of eligibility for employment nor directs the provider to issue a disapproval, the provider may act on the application in its own discretion.</p> <p>(3) Where the criminal history information of a prospective employee reveals a conviction for any crime other than one set forth in paragraph (2) of this subdivision, the Department may, consistent with article 23-A of the Correction Law, propose disapproval of eligibility for employment.</p> <p>(i) The Department shall provide to the provider and the prospective employee, in writing, a summary of the prospective employee's criminal history information along with the notification identified in this paragraph. Upon the provider's receipt from the Department of a notification of proposed disapproval of eligibility for employment, the provider shall not allow the prospective employee to provide direct care or supervision to patients, residents, or clients of such provider until receipt of a final determination from the Department.</p> <p>(ii) In cases where the Department does not issue a disapproval of eligibility for employment, the provider may act on any application for employment in its own discretion, consistent with article 23-A of the</p>					
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	<p>Correction Law.</p> <p>(4) Where the criminal history information of a prospective employee reveals a charge for any felony, the Department shall hold the determination regarding a prospective employee's eligibility for employment in abeyance until the charge is finally resolved. Upon receipt of notification from the Department of the abeyance, the provider shall not allow the prospective employee to provide direct care or supervision to patients, residents, or clients of such provider before final resolution of the criminal charge.</p> <p>(5) Where the criminal history information of a prospective employee reveals a charge for any misdemeanor, the Department may, after review of the severity of the misdemeanor, hold such determination in abeyance until the charge is finally resolved. If the Department holds such determination in abeyance, the provider shall not allow, upon receipt of notification of such determination from the Department, the prospective employee to provide direct care or supervision to patients, residents, or clients of such provider before final resolution of the criminal charge.</p> <p>(b) Prior to making a final determination to disapprove a prospective employee's eligibility for employment pursuant to subdivision (a) of this section, the Department shall afford the prospective employee an opportunity to explain in writing, within thirty calendar days from the date the notification was mailed to the prospective employee, why the prospective employee's eligibility for employment should not be disapproved. This notice shall be sent in a manner of mailing that is capable of verifying the date of mailing.</p> <p>(c) Where the Department directs a provider to disapprove eligibility for employment of a prospective employee, or terminate a temporarily approved prospective employee based on the criminal history information, the provider shall notify such prospective employee that such criminal history information is the basis of the disapproval. Such notification shall advise the prospective employee that a copy of the summary of the criminal history information provided by the Department to the provider is available from the provider upon written request by the prospective</p>					
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	<p>employee.</p> <p>(d) Documentation and confidentiality requirements.</p> <p>(1) Only an authorized person(s) or his or her designee who shall be employed by the provider and the subject individual shall have access to criminal history information received by a provider pursuant to this Part. However, criminal history information may be disclosed by an authorized person(s) to other persons who directly participate in any decision by the provider with regard to such subject individual, to which this criminal history information is relevant.</p> <p>(2) Each authorized person(s) and any other party to whom such criminal history information is disclosed shall keep criminal history information strictly confidential.</p> <p>(3) Any party who willfully permits the release of any confidential criminal history information obtained from a criminal history record check pursuant to this section to parties not authorized to receive it in accordance with article 28-E of the Public Health Law and section 845-b of the Executive Law shall be guilty of a misdemeanor pursuant to section 12-b of the Public Health Law.</p>					
402.8	<p>Section 402.8 - Notifications of Criminal Charges or Convictions Incurred Subsequent to Hiring</p> <p>402.8 Notification of Criminal Charges or Convictions Incurred Subsequent to Hiring: (a) Upon receiving notification from the Division that there is a pending criminal action or proceeding, or conviction, with regard to an employee, the Department shall promptly notify an authorized person(s) of a provider of the allegation or new conviction.</p> <p>(b) The provider shall determine whether the action or proceeding or conviction presents a threat to the health, safety and well-being of a resident or patient.</p>					

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402.9	<p>Section 402.9 - Responsibilities of Providers; Required Notifications</p> <p>402.9 Responsibilities of Providers; Required Notifications: (a) Recordkeeping. (1) Each provider shall establish, maintain, and keep current, a record of:</p> <p>(i) a roster of current employees who were reviewed pursuant to this Part and a list of their staffing assignments; such roster shall be submitted by April 1 of each year or upon written request of the Department in a form and format specified by the Commissioner.</p> <p>(ii) the names of each person for whom a request for a criminal history information was submitted to the Department;</p> <p>(iii) for each such name recorded pursuant to subparagraph (ii) hereof, a copy of the signed informed consent form required pursuant to section 402.5 of this Part,</p> <p>(iv) and the results of the criminal history record check and determination of the Department with regard to the employment; and</p> <p>(v) for certified home health care agencies, licensed home care services agencies or long term home health care programs licensed or certified under Article 36 of the Public Health Law, the onsite supervision and alternate week contacts made for assessment of temporary employees as set forth in Section 402.4(b)(2)(ii) of this Title.</p> <p>(2) Such record shall be maintained in a manner that ensures the security of the information contained therein, but which also assures the Department of immediate and unrestricted access to such information upon its request, for the purpose of monitoring compliance with this Part.</p> <p>(b) Notifications. A provider must immediately, but within no later than 30 calendar days after the event, notify the Department, and document such notification occurred, when:</p> <p>(1) any prospective employee who is subject to a criminal history record</p>					
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	<p>check in accordance with this Part withdraws an application for employment or is no longer being considered as a prospective employee as defined in this Part; or</p> <p>(2) any employee who was subject to, and underwent, a criminal history record check in accordance with this Part is no longer employed by the provider.</p> <p>(3) any employee once subject to, and underwent, a criminal history record check in accordance with this Part but is no longer working in a position defined in section 403.2(e) of this Title for the provider.</p> <p>(c) Retention and disposal of information. (1) Each provider subject to the provisions of this Part shall maintain information necessary to demonstrate compliance with this Part, as set forth in subdivision (a) of this section, for at least six years after the person ceases to be a subject individual, unless otherwise directed by the Department.</p> <p>(2) If directed to do so by the Department, a provider subject to this Part shall dispose of the summary of the criminal history information and/or any other information related to criminal history record checks in accordance with such direction.</p> <p>(3) Disposal of the criminal history information and records of Department determinations shall be performed in a manner that ensures the confidentiality of the information.</p> <p>(d) Policies and procedures. Each provider subject to the provisions of this Part shall have policies and procedures designed to implement the provisions of this Part. Amendment of existing personnel policies and procedures to reflect these new requirements is sufficient compliance with this subdivision.</p>					
402.10	<p>Section 402.10 Reimbursement.</p> <p>402.10 Reimbursement: (a) In the event that funds are appropriated in any given fiscal year for reimbursement for the costs of obtaining criminal history information required by this Part, reimbursement shall be made</p>					

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	<p>available in an equitable and direct manner for the projected cost of the fee established pursuant to law by the Division for processing a criminal history information check, the fee imposed by the FBI for a national criminal history check, and costs associated with obtaining the fingerprints to all providers licensed, but not certified, under Article 36 of the Public Health Law, including those that are subject to this Part and are unable to access direct reimbursement from state and/or federally funded health programs.</p> <p>(b) Residential health care facilities licensed pursuant to Article 28 of the Public Health Law and certified home health care agencies and long-term home health care programs certified or approved pursuant to Article 36 of the Public Health Law, may, subject to the availability of federal financial participation, claim as reimbursable costs under the medical assistance program, costs reflecting the fee established pursuant to law by the Division for processing a criminal history information check, the fee imposed by the FBI for a national criminal history check, and costs associated with obtaining the fingerprints, provided, however, that for the purposes of determining rates of payment pursuant to Article 28 of the Public Health Law for residential health care facilities, such reimbursable fees and costs shall be reflected as timely as practicable in such rates within the applicable rate period.</p>					
403.1	<p>Section 403.1 Applicability</p> <p>403.1 Applicability: (a) This Part shall apply to every home care services agency certified, licensed or authorized under Article 36 of the Public Health Law, including agencies exempt under Public Health Law Section 3619; any education or training program for home health aides or personal care aides that is authorized, licensed or approved by either the Department or the New York State Education Department; and any person who has successfully completed a state approved education or training program.</p> <p>(b) Nothing in this Part shall be construed to amend, supersede or otherwise modify any requirements of the regulations of the Department of Health relating to the education or training of home health aides or</p>					

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	personal care aides by New York State authorized education or training programs					
403.2	<p>Section 403.2 Definitions.</p> <p>403.2 Definitions: For purposes of this Part, the following terms shall have the following meanings:</p> <p>(a) "Commissioner" means the Commissioner of Health of the State of New York.</p> <p>(b) "Department" means the New York State Department of Health.</p> <p>(c) "Home care services entity" or "entity" means a home care services agency or other entity providing home care services subject to Article 36 of the Public Health Law or exempt under section 3619 of such law.</p> <p>(d) "Home care services worker" or "worker" means any person engaged in or applying to become engaged in providing home health aide services, as defined in Public Health Law section 3602(4) or personal care aide services, as defined in Public Health Law section 3602(5).</p> <p>(e) "Home care services worker registry" or "registry" means the home care services worker registry established by Public Health Law section 3613.</p> <p>(f) "Home care services worker trainee" or "trainee" means an individual who has applied for and been accepted into a state approved education or training program.</p> <p>(g) "State approved education or training program" or "program" means a program that provides education or training for persons to meet any requirement established by the Department for providing home health aide services or personal care services, which program is approved by the Department or the New York State Education Department.</p> <p>(h) "Successfully completed" or "successful completion" means, in connection with home health aide training, compliance with 10 NYCRR</p>					

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	700.2(b)(9); in connection with personal care aide training, it means compliance with 18 NYCRR 505.14(e). (i) "Senior official" means an individual with responsibility for oversight of a training program and who is authorized to execute a legally binding instrument on behalf of the operator of the program. The senior official may be the operator if the operator is a natural person.					
403.3	Section 403.3 General Requirements 403.3 General Requirements: (a) Each state approved education or training program and home care services entity must request and submit information required for the registry as specified in this Part. Each program and entity shall designate at least two individuals to access and enter data in the registry and shall submit the names, positions and contact information for each such individual to the Department in the form and manner required by the Department. (b) Each program or entity subject to the provisions of this Part shall have policies and procedures designed to implement the provisions of this Part. (c) Only an individual designated in accordance with subsection (a) of this section shall submit the information to the registry. Home care services workers or trainees may submit information to any such individual for inclusion in the registry as specified in this Part					
403.5	Section 403.5 Responsibilities of Home Care Services Entities 403.5 Responsibilities of home care services entities: (a) A home care services entity will have the following responsibilities with respect to home care services workers employed on or after September 25, 2009: (1) For any home care services worker who began their training on or after September 25, 2009, a home care services entity shall access the worker's registry information prior to the worker beginning to provide home care services for that entity. (2) A person who successfully completed a state approved education or training program for home health aides or personal care aides that began					

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	<p>on or after September 25, 2009, may not provide home care services unless the person's information has been posted to the registry by the education or training program.</p> <p>(3) within 10 business days after the worker has been employed by the home care services entity, enter the information required by section 3613(3)(f) of the Public Health Law into the registry in the form and manner required by the Department;</p> <p>(4) For all home care services workers who successfully completed training before September 25, 2009, prior to the worker beginning to provide home care services, a home care services entity must access the worker's registry information. If the worker is not yet listed in the registry, the entity shall, prior to the individual beginning to provide home care services:</p> <p>(i) Obtain the information required by section 3613(3)(a)-(f) of the Public Health Law from the home care services worker;</p> <p>(ii) Obtain a copy of the certificate issued to the prospective employee by the state-approved training program; and</p> <p>(iii) Enter the information required by Public Health Law section 3613(3)(a)-(f) into the registry.</p> <p>(5) Within 10 business days after the home care services worker begins to provide home care services, update the registry information to show the worker's employment with the entity, including the start date;</p> <p>(6) Within 10 business days after receiving information from a home care services worker that is not in the registry, update the registry to include the new or updated information. If the updated information is a change of name, obtain and retain documentation of the change as provided in section 403.6(a)(4) of this Part;</p> <p>(7) Within 10 business days after a home care services worker's employment with the entity is terminated, update the registry with the date</p>					
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	<p>on which the worker's employment with the entity was terminated;</p> <p>(8) Upon request of any home care services worker currently employed by the entity, provide access to complete registry information relating to the employee, including a printed report if requested.</p> <p>(9) Within 10 business days after a request by a home care services worker, correct information in the registry that was entered incorrectly by the entity. An entity must request verification from the worker supporting the correction. If the correction involves a change of name, obtain and retain documentation of the change as provided in section 403.6(a)(4) of this Part.</p> <p>(b) For every home care services worker who was employed by a home care services entity as of September 25, 2009, the home care services entity shall, on a schedule provided by the Department, enter all of the information required by section 3613(3)(a)-(f) of the Public Health Law on the registry with respect to such workers.</p>					
403.6	<p>Section 403.6 - Responsibilities of Home Care Services Workers</p> <p>403.6 Responsibilities of Home Care Services Workers: (a) Home care services workers have the following responsibilities:</p> <p>(1) Workers must retain in good order their certificate of successful completion of training and display it to a prospective employer when requested;</p> <p>(2) If a worker discovers that a training program or entity incorrectly entered information regarding the worker in the registry, the worker must provide corrected information, including any verification of the change that may be requested, to the training program or entity;</p> <p>(3) If any information required for the registry changes, the worker must inform the program or entity of the changes and provide verification of the</p>					

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	change as requested by the program or entity; (4) If a worker changes his or her name, the worker must provide proof of the name change to the program or entity. The program or entity will change the worker's name in the registry and must retain a copy of the proof submitted in the entity's permanent records. Appropriate proof of change of name includes copy of a certificate of marriage, decree of divorce, or other court order authorizing a person to change his or her name.					
403.7	Section 403.7 Other Responsibilities 403.7 Other responsibilities: (a) Each program shall establish, maintain, and keep such records as are required to show compliance with this Part for a period of 6 years after the successful completion of training, unless otherwise directed by the Department or the New York State Education Department. (b) Each entity shall establish, maintain, and keep such records as are required to show compliance with this Part for a period of 6 years after the termination of a worker's employment, unless otherwise directed by the Department					