Offshoring Data Policy

Purpose and Benefits

The NYS Department of Health (the Department) is responsible for protecting Medicaid Confidential Data (MCD), Protected Health Information (PHI) as defined by the Health Insurance Portability and Accountability Act (HIPAA), and other information subject to the protections contained in the NYS Personal Privacy Protection Law (collectively referred to as "Protected Data") originating from the Department. The requirement for safeguarding this Protected Data extends to all contractors and sub-contractors responsible for information technology systems that store, process, or permit access to Protected Data.

The Department requires that Protected Data be maintained according to the HIPAA Privacy and Security Rules. These privacy and security provisions contain specific federal standards for the protection of individually identifiable health information. The Department determines permitted uses and access to Protected Data based on risks associated with this information, and compliance with HIPAA.

The Department is implementing this policy to address the following concerns with the offshoring of Department data:

- Challenges to offshore compliance and enforcement of U.S. laws and regulations;
- Enforceability of Business Associate Agreements in non-United States countries and territories.

Authority

The Department of Health, Office of Health Insurance Programs, is authorized as the Single State Agency to administer the Medicaid program pursuant to 42 USCS 1396a(5). Under 42 CFR 431.10 (e), DOH OHIP may not delegate, to other than its own officials, the authority to supervise the plan or to develop or issue policies, rules, and regulations on program matters. A State Plan must provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan (42 USCS 1396a(7)). OHIP is subject to and must abide by HIPAA requirements.

Scope

This policy applies to all Protected Data released under the authority of, and originating within, the New York State Department of Health.

Information Statement

The New York State Department of Health prohibits the storage or processing of, or access to, Protected Data by, including but not limited to, any and all employees, agents, representatives, contractors, or subcontractors, located outside of the United States and its territories.

Compliance

This policy is effective as of January 2022 and going forward. The NYSDOH OHIP may amend its policies and standards at any time; compliance with amended policies and standards is expected.

If compliance with this policy or standard is not feasible or technically possible, or if deviation from this policy is necessary to support a business function, an exception request can be made via the OHIP exception process.

Contact Information

Submit all inquiries and requests for future enhancements to the policy owner at:

Office of Health Insurance Programs
Medicaid Confidential Data Governance

Revision History

This policy shall be reviewed at least once every year to ensure relevancy.

Date	Description of Change	Reviewer
November 2021	Original OHIP draft	MDG Policy Workgroup
December 7, 2021	Refer policy to Exec Committee	MDG Steering Committee
December 14, 2021	Endorsement	MDG Executive Committee
January 2022	Policy release	OHIP
March 2023	Yearly Review	MDG Policy Workgroup
November 2, 2023	Updated compliance language as approved by the MDG Steering Committee	MDG Policy Workgroup
June 6, 2024	Yearly Review	MDG Policy Workgroup
May 27, 2025	Yearly Review	MDG Workgroup

References & Related Legislation, Policies, and Procedures

1. 42 USCS 1396a(5)
2. 42 USCS 1396a(7)42 CFR 431.10(e)
3. Health Insurance Portability and Accountability Act