



Mitchell Katz, M.D.  
President and CEO  
NYC Health + Hospitals  
50 Water Street, 17<sup>th</sup> Floor  
New York, NY 10004

**Operating Procedure 120-19**

**CORPORATE RECORDS MANAGEMENT PROGRAM**

**TO:** All New York City Health and Hospitals’ Workforce Members  
Distribution “E”

**FROM:** Mitchell Katz, M.D.  
President and Chief Executive Officer

**DATE:** June 20, 2024

---

**TABLE OF CONTENTS**

- I. POLICY: ..... 1
- II. “RECORD” DEFINED:..... 1
- III. “RECORDS MANAGEMENT PROGRAM” DEFINED:..... 2
- IV. PURPOSE: ..... 2
- V. LEGAL REQUIREMENTS: ..... 2
- VI. SCOPE: ..... 2
- VII. APPLICABILITY: ..... 3
- VIII. RESPONSIBILITIES: ..... 3
- IX. ATTACHMENTS: ..... 6
- X. ADOPTION OF RECORD RETENTION SCHEDULE: ..... 6
- XI. RECORD RETENTION PROCEDURE: ..... 7
- XII. TAMPERING WITH AND/OR FALSIFYING SYSTEM RECORDS IS STRICTLY PROHIBITED:..... 7
- XIII. RECORDS PERTAINING TO INTERNAL AND EXTERNAL AUDITS OR REQUESTS MADE BY CITY, STATE, AND/OR FEDERAL AGENCIES:..... 7
- XIV. PATIENT/MEDICAL RECORDS AND HUMAN SUBJECT RESEARCH RECORDS:7
- XV. ELECTRONIC RECORDS AND E-MAILS: ..... 9
- XVI. PRESERVATION OF RECORDS AND SUSPENSION OF ROUTINE RECORD DESTRUCTION PROCEDURES FOR LITIGATION AND INVESTIGATORY PURPOSES..... 9
- XVII. RECORDS THAT HAVE BEEN MICROFILMED OR ELECTRONICALLY DUPLICATED: ..... 13
- XVIII. HHC ACO, INC. RECORDS: ..... 13
- XIX. DESTRUCTION OF RECORDS THAT HAVE MET RETENTION REQUIREMENTS: .....14

XX. HISTORICALLY SIGNIFICANT/ARCHIVAL RECORDS:.....	15
XXI. RECORDS DAMAGED BY DISASTERS:.....	15
XXII. MANAGEMENT OF RECORDS FROM CLOSED FACILITIES:.....	16
XXIII. STORAGE OF RECORDS ONSITE OR AT FACILITIES MAINTAINED BY THIRD PARTY VENDORS: .....	16
XXIV. FREEDOM OF INFORMATION LAW REQUESTS:.....	18
XXV. DISPOSITION OF EMPLOYEE DISCIPLINARY, INVESTIGATIVE AND PERFORMANCE EVALUATION RECORDS: .....	18
XXVI. APPLICABLE LAW PREVAILS: .....	18
XXVII. MANDATORY COMPLIANCE: .....	18
XXVIII. MANDATORY REPORTING: .....	18
XXIX. WHISTLEBLOWER PROTECTION: .....	19
XXX. QUESTIONS:.....	19
XXXI. ONGOING REVIEW OF THIS POLICY:.....	19
XXXII. FUTURE POLICIES/DEVIATIONS OF THIS OP:.....	19
XXXIII. EFFECTIVE DATE:.....	20

I. **POLICY:** NYC Health + Hospitals (the “System”) is committed to: (i) maintaining all Records generated or maintained in an accurate, efficient, secure, and cost effective manner, in full compliance with applicable Federal and New York State (“State”) Record retention laws, and consistent with the System’s internal policies and procedures; (ii) considering the value of any Record prior to its disposition; (iii) developing and maintaining an effective Records Management Program; and (iv) encouraging the systematic disposal of unneeded Records.

II. **“RECORD” DEFINED:**

A. Definition of Record – For purposes of this Operating Procedure (“OP” or “Policy”), the term “Record” shall mean information the System creates, acquires, and maintains in the normal course of business including any book, paper, electronic document, map, photograph, microphotograph, other information-recording device, or documentary medium, regardless of physical form, format or characteristic, that is drafted, made, produced, created, executed, or received by the System or any Workforce Member thereof pursuant to law or in connection with the transaction of public business.<sup>1</sup> Records can be in any media, including paper and electronic microfilm, audiovisual, or other formats.<sup>2</sup> The term Record shall not include “non-records” as defined in subdivision C of this section.

B. Records Created Outside of the System – Records created by any System Workforce Member while outside the System, including email produced in Workforce Members’ home and on their personal home computers, remain the property of the System.<sup>3</sup>

C. Non-Record<sup>4</sup> – For purposes of this Policy the term “non-record” shall mean: (i) library materials; (ii) extra copies of documents created only for convenience; (iii) stocks of publications, but not including a single copy of any publication the System creates; (iv) emails regarding general listserv messages; (v) spam; or (vii) documents, data, and any other type of information, personal notes or temporary drafts, that: (a) do not match the content and purpose and/or function of any of the schedule items found in the Record Retention and Disposal Schedule or are not otherwise required to be retained by provisions found elsewhere in this Policy; and (b) do not reasonably appear to be any of the following:<sup>5</sup>

1. Information required to meet the Systems’ administrative, fiscal, or legal needs;
2. Information that has historical, research, or other archival value;
3. Information that is evidence of the Systems’ final decisions and actions;  
or
4. Information that has been created or received by the System in the operation of its responsibilities.

D. Definition of Research Record – For purposes of this Policy, Research Records are defined to include, but are not limited to, grant or contract application; grant or contract progress

and other reports; laboratory notebooks; notes; correspondence; videos; photographs; X-ray film; slides; biological materials; computer files and printouts; manuscripts and publications; equipment use logs; laboratory procurement records; animal facility records; research protocols; consent forms; medical charts; and Human Subject files.<sup>5</sup>

It is important to note that Materials and Records Related to Research may require longer retention periods than that provided for in the Schedule based on record retention requirements: (i) mandated by governmental or other external funding sources; (ii) found in sponsor research agreements; and/or (iii) found in grants.

- E. Restricted Records – Records classified as confidential, due to their high level of sensitivity by law, policy, or contract. Restricted Records are highly sensitive. Examples include: (i) staff employment records; (ii) Records containing Personally Identifying Information (“PII”); or (iii) Records containing Protected Health Information (“PHI”) and electronic PHI (“ePHI”).
- F. Private Records – When the confidentiality of a Record is preferred due to its moderate sensitivity level, it is classified as a Private Record. Examples include, but are not limited to: (i) proprietary Records: business plans, contracts, meeting minutes, etc.; (ii) physical site plans; (iii) System security policies; or (iv) the Information Security Program Records.

- III. **“RECORDS MANAGEMENT PROGRAM” DEFINED:** For purposes of this OP, the term “Records Management Program” shall mean the System’s ongoing, coordinated, administrative effort to systematically manage its Records from initial creation to final disposition.<sup>6</sup>
- IV. **PURPOSE:** The purpose of this OP is to establish a System-wide Records Management Program, including the promulgation of guidelines for the retention and disposal of Records.
- V. **LEGAL REQUIREMENTS:** Under Article 57-A of the Arts and Cultural Affairs Law, as a public benefit corporation, the System is considered a “local government” and, as such, is required to establish a Records Management Program for the organized and productive management of its Records including those Records that have enduring/archival value (*see* § XX, subdivision A).<sup>7</sup>
- VI. **SCOPE:** This OP governs Record management activities at all System facilities, units, and entities, including but not limited to:
  - A. All acute care hospitals;
  - B. All Diagnostic and Treatment Centers (“D&TCs”), including those designated as Federally Qualified Health Centers (“FQHC”), and associated clinics;
  - C. All skilled nursing and long-term care facilities;
  - D. All subsidiary corporations;
  - E. All Central Office units; and
  - F. Community Care.

**VII. APPLICABILITY:** This OP applies to all of the System's Workforce Members, defined as any of the following System individuals, whether serving in a temporary or permanent capacity on the System's premises or remotely, who perform System duties, functions or activities on a full-time, part-time, or per diem basis:

- A. Employees;
- B. Affiliate employees;<sup>8</sup>
- C. Members of the medical staff of any System facility, unit or entity;
- D. Members of the System's Board of Directors and their designees;
- E. Directors of the System's wholly owned subsidiaries;
- F. Members of the Gotham Health FQHC, Inc. Board of Directors;
- G. Interns, residents and fellows employed by or under contract with the System;
- H. Trainees;
- I. Students;
- J. Volunteers; and
- K. Any individual whose conduct, in the performance of work functions and duties on behalf of the System, is under the direct supervision of the System, whether or not they are paid by the System.

**VIII. RESPONSIBILITIES:**

- A. Facility Chief Executive Officers ("CEOs") and System Senior Vice Presidents – CEOs are responsible for, among other things, ensuring that all facilities under their scope operate in accordance with this Policy, and implementing internal controls to monitor Record retention and disposal activities. Central Office Senior Vice Presidents are responsible for ensuring that all Central Office units in their departments operate in accordance with this Policy and implement internal controls to monitor Record retention and disposal activities.
- B. Acute Care Facility Chief Financial Officers ("CFOs") and Gotham Health Regional Directors of Ambulatory Care CFOs and Gotham Health Regional Directors of Ambulatory Care are responsible for, among other things, the appropriate implementation of Record retention and disposal procedures in their facilities. These responsibilities include the designation of a Facility Records Management Officer ("Facility RMO") and the development of internal controls. Internal controls include, but are not limited to, the inventory of facility-wide Records, and monitoring Records disposal and archival procedures, off-site archives, and compliance with applicable regulatory requirements.
- C. Corporate Records Management Officer ("Corporate RMO")
  - i. Pursuant to State regulation, the Corporate RMO is responsible for, among other things, the following:<sup>9</sup> (a) working with the State Archives and Records Administration and updating the Record retention and disposal procedure/schedule; (b) recommending to the Commissioner of the New

York State Education Department (“SED”) suitable retention periods for any Record not covered by Records retention and disposition schedules; (c) coordinating the storage and management of inactive Records (those Records no longer needed to conduct day- to-day business) and assessing the appropriateness of physically storing such records; (d) the coordination of Central Office Record retention and disposal procedures/schedules and related matters; (e) serving as liaison to System facilities requesting the disposal of Records and related materials; (f) verifying that all disposal requests have met corporate retention requirements prior to sanctioning the disposal of the corresponding Records; (g) sharing facility requests with all relevant Central Office units as appropriate; (h) organizing or coordinating a program for the identification, administration, and use of Records of enduring value (also referenced as “Archival Records”); and (i) serving as the point of contact for the scanning and electronic storage of records.<sup>10</sup>

- ii. The Corporate RMO shall serve as the System’s “records management officer” as that term is defined under SED regulations found at 8 NYCRR 185.1 (a).<sup>11</sup> The Corporate RMO shall report directly to the Chief Corporate Compliance Officer (“CCO”) with regard to their Record management responsibilities. In addition, the Corporate RMO shall be responsible for all other duties and functions of the records management officer outlined in Article 57-A of the Arts and Cultural Affairs Law and 8 NYCRR part 185, except that with regard to those duties and functions designated pursuant to this Policy to the Facility RMOs, at § VIII, subdivision D, or the Records Management Governance Committee (“RMGC”), at § VIII, subdivision H, the Corporate RMO shall work in conjunction with the Facility RMOs, Central Office Department Heads, and the RMGC to ensure the implementation of such functions.

D. Facility Records Management Officers (“Facility RMOs”) – Facility RMOs are responsible for, among other things, the coordination of their facility’s Record retention and disposal activities. This responsibility includes working with Department Heads/Cost Center Managers to ensure facility Record inventories are conducted; the maintenance of Record retention and disposal summary documentation; periodic monitoring of facility Record retention, archival, and disposal practices; and serving as the liaison to the Corporate RMO regarding the disposal of patient case Records and related material. Facility RMOs will ensure compliance with retention and disposal requirements and will verify disposal requests as having met the corporate retention schedule and are not subject to litigation and/or investigatory hold prior to submission to the Corporate RMO. With respect to carrying out the responsibilities outlined in this OP, all Facility RMOs shall have supplemental dotted line reporting responsibilities to the Corporate RMO.

E. Office of Legal Affairs (“OLA”) – For purposes of this OP, OLA is responsible for, among other things, providing legal guidance in the case of an apparent conflict

between this OP and applicable law, or to the Corporate RMO as requested.

- F. Office of Corporate Compliance (“OCC”) – For purposes of this OP, the OCC is responsible for, among other things: (i) oversight of the System’s Records management, retention, and disposal procedures; and (ii) addressing Records management as a core area of the System’s Corporate Compliance Program. Upon the approval of both the System’s President and, as provided under Article 57-A of the Arts and Cultural Affairs Law and its implementing regulations, the System’s Board of Directors, the OCC shall recommend a Workforce Member to serve as the System’s Corporate RMO.<sup>12</sup> In the event that the Corporate RMO position becomes vacant, the OCC shall promptly recommend a new Corporate RMO to the President and the Board of Directors for approval and designation; such designation shall take place within 60 days of the incumbent’s departure.<sup>13</sup> At the direction of the Chairperson of the Board of Directors, the CCO shall notify the Commissioner of the SED of the name, title, and contact information of the replacement Corporate RMO within one month of such designation.<sup>14</sup> If the Corporate RMO position becomes vacant, the CCO shall serve as the interim Corporate RMO until a new Corporate RMO is selected and appointed.
- G. Office of Internal Audits – Upon the request of the OCC, as set forth in OP 50-1 (Corporate Compliance and Ethics Program), the Office of Internal Audits, as part of its normal auditing activities, may assist the OCC as needed to periodically audit compliance with this OP.
- H. Records Management Governance Committee (“RMGC”) – The Records Management Governance Committee is responsible for, among other things:
- i. Assuring that this OP is implemented in an efficient and uniform manner throughout the System;
  - ii. Aligning the System’s requirements for records management with strategic and operational goals as well as regulatory requirements;
  - iii. Aligning, developing and approving the System’s policies and supporting processes governing or impacting records management;
  - iv. Educating functional departments and end users of applicable policies and procedures, and any changes thereto;
  - v. Advising functional departments on records management activities and related risks;
  - vi. Monitoring and ensuring compliance with the System’s record management policies and Operating Procedures through review of key performance indicators and evidentiary materials; and
  - vii. On an annual basis, issuing reports to the System President outlining:
    - a. The total number of Records stored with external vendors, including the costs of storing these records;
    - b. Initiatives taken by the RMGC to manage System Records; and

- c. Strategies or guidance to mitigate risks associated with the System's Records.
  - viii. The CCO shall, on behalf of the RMGC, disclose the findings of the reports to the Audit Committee of the Board of Directors.
  - ix. The RMGC shall meet periodically, as needed, but in no event less than once per calendar year. The RMGC is chaired by the CCO (or designee).
- I. Central Office Department Heads – Central Office Department Heads are responsible for, among other things, ensuring compliance with Record retention and disposal requirements within their Central Office units and departments, and will verify disposal requests as having met the requirements of this OP prior to submission to the Corporate RMO, including ensuring that Records necessary for audit, litigation, investigatory, or contractual purposes are not destroyed.
- J. Workforce Members – All Workforce Members are responsible for retaining, managing, and disposing of Records in compliance with this OP.

**IX. ATTACHMENTS:**

- A. Significance – The attachments to this OP are necessary for the implementation of the Records retention and disposition requirements and procedures, and are incorporated and made part of this OP. Accordingly, responsible Workforce Members should review and familiarize themselves with these attachments prior to implementing the Records Disposal Procedure. The two attachments are, in numerical order, as follows:
  - i. Attachment I – “New York City Health and Hospitals Records Retention and Disposal Schedule” (the “Schedule”). The Schedule adopts and follows the Record retention requirements promulgated by the Commissioner of the SED for local government public benefit corporations. The Schedule, which was adopted via formal resolution by the System's Board of Directors on September 28, 2023, contains the Record retention periods for all Records applicable to the System and, pursuant to the Schedule, shall be reviewed prior to the disposition of any Record.
  - ii. Attachment II – “Application and Authorization for Records Disposal” [HHC 2845 05/24] form. This form shall be completed by various responsible System Workforce Members to facilitate the disposition of Records. Questions regarding how to appropriately complete the Application should be directed to the Corporate RMO.

- X. **ADOPTION OF RECORD RETENTION SCHEDULE:** All amendments to the Schedule, except those pursuant to the issuance of a revised schedule by the Commissioner of the SED, shall be formally adopted by the System's Board of Directors via resolution.<sup>15</sup> Note, however, that once the Board of Directors adopts the Schedule, future Board of Directors adoption is not necessary if changes in the Schedule are subsequent to, and



adopted from, a revised retention schedule issued by the SED.<sup>16</sup>

**XI. RECORD RETENTION PROCEDURE:** All Workforce Members are required to comply with the provisions of the Schedule and with other provisions of this OP concerning the retention and disposal of Records. Unless otherwise stated in this OP, applicable law, or as directed by any of the individuals mentioned in § VIII, the System is required to keep only one copy of a given Record -the official or record copy -to satisfy the Record retention requirements found in the Schedule.<sup>17</sup>

**XII. TAMPERING WITH AND/OR FALSIFYING SYSTEM RECORDS IS STRICTLY PROHIBITED:** Any Workforce Member who, in violation of System policies and procedures or applicable law: (i) removes, mutilates or destroys a Record; (ii) makes or causes to be made a false entry in or falsely alters, erases, obliterates, deletes, removes or destroys a true entry in a Record;<sup>18</sup> (iii) fails to make a true entry in a Record as required by law, professional standard, job description or System policy; or (iv) prevents the making of a true entry or causes the omission thereof in a Record,<sup>19</sup> will be subject to disciplinary action up to and including termination of employment, contract and/or other affiliation with the System.

A. Mandatory Reporting – Any Workforce Member who is aware of an incident involving the falsification of, or tampering with a Record as described in this section, or has been directed by another Workforce Member or other person to falsify or tamper with a Record, has an affirmative obligation to immediately report the same to the OCC as provided in section XXVIII.

**XIII. RECORDS PERTAINING TO INTERNAL AND EXTERNAL AUDITS OR REQUESTS MADE BY CITY, STATE, AND/OR FEDERAL AGENCIES:** Records that are the subject of internal or external audits, or requests made by city, state and/or federal regulatory agencies or law enforcement authorities, shall be retained in a manner consistent with this OP. In all cases, such Records shall, at a minimum, be maintained until the System receives the corresponding audit report or the basis for the request has been appropriately addressed.<sup>20</sup>

**XIV. PATIENT/MEDICAL RECORDS AND HUMAN SUBJECT RESEARCH RECORDS:**

A. Required Period of Retention of Medical Records and Human Subject Research Records Under Applicable Law – The required retention period for patient Records/medical Records (“collectively hereinafter “Medical Records”), as well as human subject research Records (“Research Records”) and other materials and data related to human subjects research (together with Research Records, “Materials and Records Related to Research”) are covered under various provisions of State and Federal law, including, without limitation, New York State Department of Health (“DOH”) regulations; New York Education Law; the New York State Education Department (“SED”) regulations; U.S. Department of Health and Human Services (“HHS”) regulations; and the Center for Medicare and Medicaid Services (“CMS”) Conditions of Participation.<sup>21</sup> Under these applicable law and regulations the period

of Record retention may be based on, among other factors, or all of the following:

- i. As stated above, the different requirements found under applicable federal and state law and regulations (*e.g.*, SED regulations; DOH regulations; HHS regulations; CMS regulations, *etc.*);
- ii. The type of System facility that generated the Record (*e.g.*, a hospital, certified home health agency, a nursing home, a diagnostic and treatment center, *etc.*); and
- iii. The type of provider who created the Record (*e.g.*, physician, or a nurse or other professional licensed under Title VIII of the Education Law, *etc.*).

B. System Policy Regarding Retention of Medical Records and Materials and Records Related to Research – In order to maintain Records in a consistent fashion and in compliance with applicable law, the System hereby adopts the following retention period with regard to Medical Records and Materials and Records Related to Research:

- i. Unless a longer period of retention is required under this Policy including, but not limited to, the Schedule, or by applicable law, including without limitation, false claims statutes all Medical Records shall, at the minimum, be retained for a period of least six years for adults.<sup>22</sup> Further, “[o]bstetrical [R]ecords and [R]ecords of minor patients shall be retained for at least six years, and until one year after the minor patient reaches the age of 21.”<sup>23</sup>
- ii. In addition to any other Federal or State requirements governing the retention of Records related to human subject research, Research Records shall, as a matter of policy, be maintained for at least seven years after the termination of a research project or one year after the youngest human subject attains age 21, or the date of the last disclosure of identifiable health information from the Research Records, if disclosures continue after all subjects have completed the study, whichever is longer.<sup>24</sup>
- iii. Medical Records and Materials and Records Related to Research that have met the period of retention outlined in this OP including, without limitation, the Schedule, shall be kept beyond the period of retention if they: (i) are active Records (*see* § XXI(A) of this Policy,); (ii) have other archival value (*see* § XX of this Policy,); are subject to preservation (*see* § XX of this Policy,); (iii) are records related to government programs subject to the Federal False Claims Act; (iv) pertain to an internal or external audit; (v) were created before 1910 (*see* § XX(B) of this Policy,); (vi) are Records related to the activities of the HHC ACO, Inc. (*see* § XVIII,); and/or (vii) are otherwise required to be kept for a longer period of retention under this Policy or applicable law.

**XV. ELECTRONIC RECORDS AND E-MAILS:**

- A. Electronic Records – Unless otherwise specifically provided in this Policy including, without limitation, the Schedule, or System directive, electronic Records shall be treated the same as any other Record of the same type or category but found in a different format.<sup>25</sup>
- B. E-mails – Unless otherwise specifically provided in this Policy including, the Schedule, emails and Records attached to e-mails shall have the same retention period as Records in other formats that are related to the same program function or activity.<sup>26</sup> E-mails may, however, be deleted or destroyed once the applicable Record retention period has been met, unless further retention is required elsewhere in this Policy or by the System’s directive. Like with all Records, Workforce Members shall follow the provisions outlined in this Policy to dispose of e-mails that are deemed an official copy and have met the required retention period set forth in this Policy.

**XVI. PRESERVATION OF RECORDS AND SUSPENSION OF ROUTINE RECORD DESTRUCTION PROCEDURES FOR LITIGATION AND INVESTIGATORY PURPOSES**

- A. Definitions:
  - Electronically Stored Information (“ESI”) Defined – For purposes of this Policy, the term “electronically stored information” (“ESI”) shall mean any e-mail messages, text messages, word processing files, spreadsheets, PowerPoint presentations, web pages, and databases created and stored on computers, magnetic disks (such as computer hard drives), optical disks (such as DVDs and CDs), and flash memory (such as “thumb” or “flash” drives), cloud-based servers hosted by third parties that are accessed through Internet connections, and any type of information stored electronically or other medium from which information can be obtained regardless of whether it is in the original format.
- B. General Policy – All routine Record destruction practices found under the Schedule, elsewhere in this Policy or other System policies shall be immediately suspended with regard to any Record under any of the following circumstances:
  - i. A memorandum (or other writing), directive or other request, whether written or oral, issued by any attorney on behalf of OLA, by the NYC Law Department, by outside counsel at the direction of OLA, or by another individual at the direction of OLA directing a Workforce Member(s) and/or a System department(s) to preserve specified Records, as of the date of the notice, and to suspend routine Record destruction practices (“Legal Hold”, which is often referred to as a “Litigation Hold/Preservation Notice”), initiating a Legal Hold for the purpose of complying with a legal obligation;

- ii. A memorandum (or other writing), directive or other request, whether written or oral, issued by the OCC, the System's Office of Inspector General ("OIG") or Office of Internal Audits ("Internal Audits"), directing a System Workforce Member(s) and/or a department(s) to preserve specified Records, as of the date of the request, and to suspend routine Record destruction practices during the pendency of an investigation, review, and/or audit being performed by their offices (hereinafter referred to as an "Investigatory Hold"). Any questions concerning such an Investigatory Hold shall be directed to the office that issued the writing, request or other directive;
  - iii. A System Workforce Member becoming aware that a legal proceeding or government investigation concerning the System (or actions taken by a Workforce Member on behalf of or in furtherance of their duties for the System) is reasonably anticipated or has commenced (hereinafter referred to as a "Triggering Event" – see subdivision F of this section, for examples of Triggering Events), in which case said Workforce Member is obligated to: (a) cease any routine Record destruction practice including, without limitation, the destruction of Records otherwise allowed under this Policy; and (b) immediately contact OLA for instructions about their preservation obligations;
  - iv. A System Workforce Member becoming aware of an investigation, review, and/or audit being performed by (or scheduled to be performed by) the OCC, OIG, Internal Audits, or an external auditor of which the Workforce Member: (a) has knowledge of and relates to their job functions and duties; (b) knows or should reasonably know that he/she is or may become a subject of said investigation, review and/or audit; or (c) has information in their possession, custody or control that may be potentially relevant or otherwise related to such investigation, review, and/or audit. Under any of these circumstances said Workforce Member is obligated to: cease all routine Record destruction practices including, without limitation, the destruction of Records otherwise allowed under this Policy; and immediately contact the office that is performing (or overseeing) the investigation, review, and/or audit at hand for instructions about their preservation obligations.
- C. Issuance of a Legal Hold Notice – OLA and/or outside counsel representing the System, and/or the NYC Law Department, will be responsible for drafting and sending out (or causing to be issued at its discretion and with its oversight) a Legal Hold Notice to all relevant Workforce Members and other potential custodians when it has knowledge of a reasonably anticipated or pending legal proceeding and/or government investigation. The Legal Hold Notice - the content of which may take into consideration a host of factors including, but not limited to: (i) the data source(s) of Records; (ii) whether a data source is reasonably likely to contain relevant information; (iii) whether there is a low degree of accessibility to a data source that is likely to contain relevant information; (iv) whether substantially similar copies of relevant Records exist in a more readily available data source; and

(v) whether the cost or burden to preserve a particular data source disproportionately exceeds the relevance or importance of the Records said data source may yield<sup>27</sup> - will set forth legal guidance as to what Records should be preserved and in what manner, the date ranges of Records to be preserved, and instructions on how to preserve such Records. The effect of the Legal Hold Notice is to suspend the retention period set forth under this OP and the Schedule and to preserve any Records related to the legal proceeding and/or government investigation.

Such identified Records shall be retained until further instruction from OLA regardless of the retention time set forth in this OP and the Schedule for such Records. In all cases, prior approval of OLA is required before destruction or relocation of: (a) any Record involved in or related to a legal action in which the System is a party or has received a subpoena; and/or (b) any Record that is subject to a Legal Hold Notice.

If litigation has commenced, such Records shall be kept for at least one year after the conclusion of the legal action (including all appeals or other judicial review), and, where the Record retention schedule has not been met, the remainder of such time found in the Schedule.<sup>28</sup>

- D. Collection of Electronic Records for Legal Hold Purposes – In collaboration with, and as directed by, OLA (or its outside counsel) and/or the NYC Law Department, Risk Management shall be responsible for the preservation, collection, storage, and maintenance of all electronic data, information, and other ESI that are the subject of a Legal Hold Notice, or are responsive to a subpoena, civil investigation demand (“CID”), government audit, or a law enforcement request. Such information shall be preserved in a manner consistent with applicable law and best e-Discovery practices.
- E. The Obligation to Preserve in Current Format – Once an obligation, as set forth in subdivision B of this section, and subdivision F of this section, to preserve Records and suspend the routine destruction of Records has been triggered by circumstances causing OLA, outside counsel, or the NYC Law Department to reasonably anticipate litigation, all Records subject to such preservation shall be kept in their current format, except as otherwise directed by OLA. Original Records shall not be reproduced or transformed into a different format or medium or otherwise be subjected to any process that would result in the replacement, destruction modification or altering of the original Records.
- F. Legal Hold Notice and Triggering Event: Guidance for Workforce Members – Once a Workforce Member receives a Legal Hold Notice, or believes that a Triggering Event has occurred obligating such Workforce Member to suspend all routine Record destruction practices, such Workforce Member shall preserve all information, whether in paper, electronic or other form (including, without limitation, emails, documents, data, ESI and any other type of information stored on computers, hard drives, cell phones, flash drives, CDs, DVDs, or any other

medium) in the System's or their possession, custody and control, including but not limited to Records:

- i. That may be used to support, or otherwise may be relevant or potentially relevant to, the actual or reasonably anticipated claims or defenses of the System or other current or future parties, in an existing or reasonably anticipated litigation;
- ii. That are subject to a subpoena issued by any court, attorney, law enforcement agency or a regulatory body;
- iii. That are subject to a CID; or
- iv. That are covered by an order of any court.

For purposes of this OP, Triggering Events may include, without limitation, requirements found under applicable law that mandate the preservation of specific documents when litigation is reasonably anticipated or has commenced; a subpoena, CID or court order is received by a Workforce Member covering or otherwise pertaining to Records; a summons and complaint received by a Workforce Member that is related to their System functions and duties; or a Workforce Member has knowledge of a catastrophic injurious event that involves the System (or one of its Workforce Members performing System functions and duties) and received such knowledge acting within the scope of their authority and where the knowledge relates to matters within the scope of that authority.

All Workforce Members are responsible for contacting OLA if there are questions about whether a particular Record or specific information shall be preserved. When in doubt, Workforce Members shall err on the side of caution and preserve any Record in question until otherwise directed.

- G. Collection of Records for Purposes of Investigatory Hold – Where appropriate, the OCC, OIG, OLA, and Internal Audits may direct EITS to collect electronic Records for official System investigatory and/or review purposes.
- H. Investigatory Hold – Guidance for Workforce Members – Once a Workforce Member receives an Investigatory Hold to preserve Records and suspend routine Record destruction practices, such Workforce Member shall follow the instructions provided in the Investigatory Hold, and preserve Records accordingly. All Workforce Members are responsible for contacting the office that issued the Investigatory Hold if there are questions about whether a particular Record or specific information shall be preserved. When in doubt, Workforce Members shall err on the side of caution and preserve any Record in question until otherwise directed. At the minimum, all e-mails shall be retained unless specifically directed otherwise by the office that issued the Investigatory Hold.

All Records subject to preservation shall be kept in their format existing at the time of the

preservation, except as otherwise directed by the office that issued the Investigatory Hold.

**XVII. RECORDS THAT HAVE BEEN MICROFILMED OR ELECTRONICALLY DUPLICATED:** Arts and Cultural Affairs Law § 57.29 governs the retention and disposition of Records that have been duplicated electronically or by means of microfilm. Under § 57.29, a Record may be reproduced by any means that “accurately and completely reproduces all the information in the [R]ecord.”<sup>29</sup> The original of the reproduced Record may subsequently be disposed of notwithstanding the retention period set forth in the Schedule “provided that the process for reproduction and the provisions made for preserving and examining the copy meet requirements established by the [C]ommissioner of [the New York State Education Department].”<sup>30</sup> Section 57.29 further provides that appropriately reproduced copies are deemed to be originals “for all purposes, including introduction as evidence in proceedings before all courts and administrative agencies.”<sup>31</sup>

Under SED regulations,<sup>32</sup> specific procedures shall be followed and/or implemented prior to replacing original Records with microfilms or electronic images. Certain records must be retained in their original format and cannot be replaced with a scanned copy. Such records include but are not limited to the following: original advance directives such as health care proxies, living wills, MOLSTs and DNRs (however, paper copies of an original advance directive received by a facility from a patient or patient representative may be replaced with a scanned copy); prescriptions and/or related pharmacy documents for controlled substances; fetal monitoring strips; films or tracings; records from prior to 1910; and records with historical and/or archival value. In addition, if a record is subject to a litigation or investigative hold, it should be maintained in its original format, if available at that time, unless destruction is approved by the office issuing the hold.

As such, no original *official* copy of a Record may be replaced by means of microfilms or electronic imaging and subsequently destroyed without the prior: (i) approval of the Corporate RMO; and (ii) consultation with EITS (or pursuant to EITS policy or directive).

**XVIII. HHC ACO, INC. RECORDS:** All Records of HHC ACO, Inc. (“HHC ACO”) shall be maintained and disposed of as set forth in this OP and the Schedule. Additionally, notwithstanding anything stated in this OP to the contrary, all HHC ACO Records, including any book, contract, document, or any other tangible source of information (such as documents or data related to Medicare utilization and costs, quality performance measures, shared savings distributions, and other financial arrangements related to HHC ACO activity) that may reasonably be likely to be part of an audit, evaluation, investigation and inspection of HHC ACO’s compliance with (i) the Medicare Shared Savings Program (the “Program”) requirements; (ii) quality of services performed; (iii) right to any shared savings payment; (iv) obligation to repay losses; (v) ability to bear the risk of potential losses; and (vi) ability to repay any losses to CMS, shall be maintained for a minimum period of ten years from the termination of HHC ACO’s agreement to participate in the Program, or from the date of completion of any audit, evaluation, investigation or inspection, whichever is later,<sup>33</sup> except as follows:

A. CMS determination of special need – where CMS has determined that a Record(s)

requires a longer period of retention than outlined above and provides HHC ACO with at least 30 days' notice before the subject Record's normal disposition date;<sup>34</sup> and

- B. The termination, dispute, or allegation of fraud or similar fault against HHC ACO – Where there has been a termination, dispute, or allegation against HHC ACO, its providers/suppliers, or other individuals or entities performing functions or services related to HHC ACO's activities, HHC ACO shall maintain Records for an additional six years (from the period first outlined in this section) from the date of any resulting final resolution of the termination, dispute or allegation of fraud or similar fault.<sup>35</sup>

**XIX. DESTRUCTION OF RECORDS THAT HAVE MET RETENTION REQUIREMENTS:**

- A. Active Records<sup>36</sup> – Active Records are those documents, regardless of format, still actively being used by an office. Active Records shall be maintained for as long as they support the System's current business functions, even if the required retention period has expired.
- B. Destruction of Inactive Records – The New York State Archives defines an "inactive record" as a record infrequently used and are not regularly needed to conduct business, but still must be retained for a legally prescribed period, according to a retention schedule.<sup>37</sup> Plans to destroy all Inactive Records, including Restricted and Private Records, shall be developed and undertaken once the relevant required period of retention has been satisfied except under the following circumstances:
  - i. Further retention is required under this OP or another System OP or policy;
  - ii. Further retention is required under applicable law or regulatory guidance;
  - iii. Further retention is required for legitimate business purposes;
  - iv. Further retention is required under a contract, agreement or stipulation to which the System is a party;
  - v. Further retention is required as part of a condition for the System to receive grant funds;
  - vi. Further retention is required as part of a condition of participation in the Medicaid or Medicare programs; or
  - vii. Further retention is required because the Records in question have significant historical, clinical, legal, operational, financial, research, employment/labor-related or other special value.



- C. Inactive Restricted and/or Private Records – With regard to inactive Restricted and/or Private Records that have met retention requirements, System facilities and Central Office units shall periodically assess and document whether there is a continued need to store such Records as provided for under subdivision B, of this section. Once such need has elapsed, the Records shall be promptly destroyed. System facilities and affected Central Office units shall follow guidance from this OP and/or the Corporate RMO regarding the destruction of such Records. An Authorization for Records Disposal (form 2845) is required for destruction or disposal of Records.

**XX. HISTORICALLY SIGNIFICANT/ARCHIVAL RECORDS:**

- A. Historically Significant/Archival Records – Historical Records, which are also referred to as Archival Records or Records of enduring value (hereinafter “Historical Records” or “Archival Records”), are Records that are kept permanently because of their long-term research use and/or their intrinsic qualities.<sup>38</sup> These Records “are worthy of continuing preservation because of their on-going administrative, legal, fiscal and historical value.”<sup>39</sup> A document is historically significant if it provides important evidence of how the System conducts its business, and/or if the Record provides significant information about people, places, or events in the System’s medical community. Significance depends on (i) when the Records were created; (ii) the information contained in the Records; (iii) the party who created the Records; and (iv) the uniqueness of the Record and/or the information.<sup>40</sup> For example, medical case Records of hospital patients that might otherwise be destroyed 10 years after death or discharge may have a permanent value as an historical document if the Records can be used to research the spread of communicable diseases such as AIDS and tuberculosis.<sup>41</sup> Even Records that are recent may be valuable because they are scarce. For example, if most of the Records from a certain period have been destroyed in a fire, a flood, or through disposal, then the Records that survive tend to be significant.

All Workforce Members are required to contact the Corporate RMO if they have questions or concerns regarding Archival Records or may have Records that meet the description of an Archival Record.

- B. Records Created before 1910: No Records created before 1910 shall be disposed of or otherwise relinquished without the prior written approval of the State Archives.<sup>42</sup> Requests for the disposal/relinquishment of such Records shall be directed to the Corporate RMO.

**XXI. RECORDS DAMAGED BY DISASTERS:** Records damaged by disasters – whether man made or natural – may be disposed of prior to the end of the retention period found in the Schedule where such Records have been “substantially destroyed or obliterated or the Records constitute a human health or safety risk.”<sup>43</sup> All requests to destroy such Records shall be submitted to the Corporate RMO. The Corporate RMO shall obtain prior approval

from the Commissioner of the SED before authorizing the disposal of such Records.<sup>44</sup>

## **XXII. MANAGEMENT OF RECORDS FROM CLOSED FACILITIES:**

- A. Pre-Closure Records Management Requirements – Pursuant to New York State DOH regulation and published guidance, no acute care hospital, nursing home, D&TC, clinic facility (collectively “System Facility”) may discontinue its services, relinquish its operating certificate or otherwise close without the written approval of the Commissioner of DOH.<sup>45</sup> Such approval will be conditioned on, among other things, the establishment of a facility closure plan that includes the closing the System facility’s plan for the maintenance, storage and safekeeping of its patients’ medical Records.<sup>46</sup> The plan shall provide adequate safeguards for these Records, make them accessible to the patients and their physicians, and may provide for their ultimate disposition.<sup>47</sup>
- B. Procedures for Managing Records from Closed Facilities – If a System facility obtains the requisite DOH approval (as outlined in subdivision A,) to discontinue its operations and thereafter initiates the corresponding closure process, all Records from the closing facility including, without limitation, medical, billing, business, and employment Records, shall be appropriately secured, preserved, and scanned or transferred to either a receiving equivalent facility, or an approved off-site storage location that allows for the lawful access of such Records and, pursuant to this section, maintains the confidentiality and security of such Records. Such Records shall also meet any additional maintenance, storage, and security requirements set forth in the DOH- approved closure plan. Workforce Members, through the facility Chief Executive Officer, or their designee, will collaborate with the Corporate RMO regarding the retention of Records for closed facilities.

## **XXIII. STORAGE OF RECORDS ONSITE OR AT FACILITIES MAINTAINED BY THIRD PARTY VENDORS:**

Storage of System Records – Unless otherwise provided for in subdivision C of this section all System Records, regardless of form, shall be appropriately and securely kept and stored onsite at a System-operated facility or approved offsite location.<sup>48</sup>

- A. Storage of Records – All System Records, and in particular active Records (*see* § XIX(A)), shall be maintained within a system that allows for the easy and timely access of Records and ensures that such Records are properly maintained and preserved.<sup>49</sup> There are three key factors to consider when storing Records onsite: (i) organization; (ii) environmental conditions; and (iii) security.
- B. Organization – A well-structured filing system is critical to enabling easy access to any Records that Workforce Members or patients may need. The New York State Archives has simple guidelines to making Records accessible:
- i. Set up an organized and uniform filing and indexing system to enable easy

- retrieval of Records;
- ii. File electronic Records in a manner that reflects your paper filing system;
- iii. Allocate adequate space and purchase appropriate filing equipment; and
- iv. Develop a file plan and detailed procedures for retrieval and refiling.

C. Environmental Conditions – All Records should be stored onsite in “a clean, secure, and stable environment.” Additionally, environmental factors such as temperature, humidity and protection from ultraviolet light shall be considered when planning for the onsite storage of Records.<sup>50</sup> The New York State Archives provides the following guidelines regarding “ideal conditions for most types of [R]ecord formats”:<sup>51</sup>

- i. Temperature between 65-70° F, with fluctuations of no more than 2 degrees;
- ii. Relative humidity at 35-45%, with fluctuations of no more than 5%;
- iii. Protection from ultraviolet light, air pollutants, and vermin; and
- iv. Protection from damage, disaster (*e.g.*, water, fire), and theft.

The Corporate RMO shall provide guidance as to the requisite environmental conditions for temperature, humidity, protection from ultraviolet light, and other relevant factors for the onsite storage of paper, electronic, and other forms of Records.

D. Security – Records maintained onsite require administrative, technical and physical safeguards to protect their confidentiality.<sup>52</sup> CMS and New York State Archives have promulgated the following guidelines for maintaining effective security and, where applicable, the confidentiality of Records:

- i. Access to storage areas shall be limited to only authorized persons;<sup>53</sup>
- ii. Storage areas shall have secure locks, fire suppression, and security systems. Records shall be stored securely and should be maintained in locations protected from “damage, flood, fire, etc., and limits access to only authorized individuals;”<sup>54</sup> and
- iii. Regular site assessments should be conducted to assess how vulnerable the storage areas are to disasters.<sup>55</sup>

E. Outsourcing of Record/Data Storage

- i. OLA Approval Required – Any agreement between the System and a third-party vendor for the outsourcing of data storage involving System Records shall be approved by OLA as to form.
- ii. EITS Approval Required – In addition to OLA’s approval, the approval of EITS is required if the Records being stored include electronic Records, including without limitation, e-mails, back-up tapes, voicemails, and all other forms of electronic Records, whether or not cloud computing, virtualization, hosting, and data vaulting are used to store such electronic Records.<sup>56</sup>

- iii. Approval by the Commissioner of SED – Any agreement between the System and a third-party vendor for the offsite storage of data shall be approved by and shall meet the criteria established by the Commissioner of SED.<sup>57</sup>

**XXIV. FREEDOM OF INFORMATION LAW REQUESTS:** Notwithstanding the retention periods set forth in the Schedule, any Record that is the subject of an existing Freedom of Information Law request (“FOIL”) shall not be destroyed until: (i) a response to the subject request has been issued by the System; and (ii) all potential appeals related to a specific FOIL request are exhausted.<sup>58</sup>

**XXV. DISPOSITION OF EMPLOYEE DISCIPLINARY, INVESTIGATIVE AND PERFORMANCE EVALUATION RECORDS:** Notwithstanding anything found in the Schedule to the contrary, Records or portions thereof relating to employee disciplinary, investigative and performance evaluation information may be disposed of, or specific information may be removed therefrom, before the retention period set forth in the Schedule is met, where such disposition or removal is based on a provision of a collective bargaining agreement in effect between the System and a public employee labor organization,<sup>59</sup> or if specified in a union contract or settlement between the System and the individual.

**XXVI. APPLICABLE LAW PREVAILS:** Notwithstanding any provision of this OP to the contrary, all Records shall be kept at the minimum for the retention period set forth under applicable law as it pertains to the particular type of Record that is the subject of retention. Thus, if applicable law calls for a longer period of retention than provided under this OP, then applicable law shall prevail. If applicable law calls for a shorter period of retention than set forth in this OP, the retention period outlined in this OP shall still be followed. OLA shall be contacted for guidance if an apparent conflict between this OP and applicable law arises that cannot be resolved by applying the more stringent Record retention period.

**XXVII. MANDATORY COMPLIANCE:** Any Workforce Member who fails to adhere to this OP in any manner will be subject to corrective, remedial and/or disciplinary action up to and including termination of employment, contract, and/or other affiliation with NYC Health + Hospitals.

**XXVIII. MANDATORY REPORTING:**

- A. All Workforce Members who know or have reason to believe that another person has violated this Policy, the procedures established hereunder, or any of the laws or regulations listed in this OP, have an affirmative duty to report the matter promptly to the CCO. All reported matters will be investigated, and if appropriate, steps will be taken to remedy the situation.
- B. **Reporting Procedure:** All reports required to be made pursuant to Subdivision A of this Section, shall be made to the CCO by phone, e-mail, facsimile or mail, as

follows:

**NYC Health + Hospitals  
Office of Corporate Compliance  
Attn.: Chief Corporate Compliance Officer  
50 Water Street, Suite 528  
New York, NY 10004  
Telephone: (646) 458-5632  
Facsimile: (646) 458-5624  
E-mail: COMPLIANCE@nychhc.org  
Confidential Compliance Helpline: 1-866-HELP-HHC (1-866-435-7442)**

**XXIX. WHISTLEBLOWER PROTECTION:**

- A. Retaliation Prohibited: NYC Health + Hospitals and HIPAA regulations<sup>60</sup> strictly prohibit retaliation, as defined in Subdivision B of this Section, or intimidation in any form, against any individual (“Reporter” or “Whistleblower”) who makes a report, complaint or inquiry in good faith concerning a violation of this OP, as well as any individual who participates in or cooperates with an investigation of any violation of this OP.
- B. Retaliation Defined: Retaliation means the discharge, suspension, demotion, engagement of threatening or coercive conduct, penalization, discrimination or other adverse employment, contractual, business-related or patient care-related action imposed against any individual or entity as a consequence of making a good faith report of any violation of this Policy or the laws and regulations stated herein.<sup>61</sup>

**XXX. QUESTIONS:** Any questions regarding the application or interpretation of this OP may be addressed to the CCO by phone, e-mail, facsimile, confidential compliance helpline or mail as provided above in Subdivision B of § XXVIII

**XXXI. ONGOING REVIEW OF POLICY:** The CCO shall be responsible for the periodic review and, where necessary the amendment, of this Policy to ensure that the purposes and procedures outlined herein remain consistent with applicable law and compliance program best practices. Such periodic review, and amendment where necessary, shall:

- A. Be the responsibility of the CCO;
- B. Take place on periodic basis but in no event less than on a biannual basis or as required by law, whichever is more frequent; and
- C. Be documented in writing and maintained by the CCO.

**XXXII. FUTURE POLICIES/DEVIATIONS FROM THIS OP:**

- A. The CCO has the authority to create policies and procedures regarding records management, subject to the approval of the President and Chief Executive Officer.
- B. The creation of any other future policies or procedures regarding records management shall not supersede this OP unless the author of such policies and procedures has consulted with the CCO regarding the implementation of the same, and it is approved by the President and Chief Executive Officer.

**XXXIII. EFFECTIVE DATE:** This OP shall become effective as of the date posted to the System's Intranet, and shall remain in effect until explicitly modified according to § XXXII, or suspended in writing by the President and Chief Executive Officer.

Version History:

Version Number	Date	Authors	Change Summary
1.0	05/30/24	Catherine Patsos	Initial Version

<sup>1</sup> Arts and Cultural Affairs Law § 57.17 (4) (defining record as “any book, paper, map, photograph, or other information-recording device, regardless of physical form or characteristic, that is made, produced, executed, or received [by the System] or [any Workforce Member] thereof pursuant to law or in connection with the transaction of public business.”); *see also* Thomas D. Norris, New York State Education Department, New York State Archives, Government Record Services, The Seven Attributes of an Effective Records Management Program at 16 (2002).

<sup>2</sup> *See* New York State Archives, Records Management, Intro for Record Managers, Managing Your Records, *Creating Records*, <https://www.archives.nysed.gov/records/introduction-for-records-managers-managing-your-records>.

<sup>3</sup> *Id.*

<sup>4</sup> *See* Arts and Cultural Affairs Law § 57.17 (4) (providing that the term record “shall not be deemed to include library materials, extra copies of documents created only for convenience of reference, and stocks of publications.”); New York State Archives, Developing a Policy for Managing Email, p. 31 (2023), <https://www.archives.nysed.gov/publications/developing-policy-managing-email>.

<sup>5</sup> *See generally*, New York State Archives, Appraisal of Local Government Records for Historical Value. [nr\\_pub50.pdf](https://www.archives.nysed.gov/records/nr_pub50.pdf) (nysed.gov); *See also*, New York State Archives, Records Management, Starting a Program, *What are records?*; *see also*, Thomas D. Norris, New York State Education Department, New York State Archives, Government Record Services, The Seven Attributes of an Effective Records Management Program at 16 (record defined) (2022), [http://www.archives.nysed.gov/a/records/nr\\_pub61.pdf](http://www.archives.nysed.gov/a/records/nr_pub61.pdf)

<sup>6</sup> Operating Procedure 180-9: Human Subject Research Protections Program Policies and Procedures §28; 42 CFR § 93.224; 45 CFR § 46.102; *see also* 40 CFR § 26.102 (d).

<sup>7</sup> 8 NYCRR § 185.1 (b) (defining records management program as an “ongoing, coordinated, administrative effort to systematically manage [the System’s] records from initial creation to final disposition.”)

<sup>8</sup> *See* Arts and Cultural Affairs Law §§ 57.17 (1) (“local government” defined); 57.19 (requiring the governing body and chief executive official of a local government to “promote and support a program for the orderly and efficient management of records, including the identification and appropriate administration of records with enduring value for historical or other research.”); *see also, generally*, 8 NYCRR § 185.1 (b) (records management program defined).

<sup>9</sup> The term “affiliate employees” shall mean all affiliate employees and other affiliate personnel who, pursuant to an affiliation agreement with the System, serve as *Contract Service Providers* and perform on behalf of the System *Contract Services*, as both of these italicized terms are defined under such corresponding affiliation agreement.

<sup>10</sup> *See generally* 8 NYCRR § 185.2 (c).

<sup>11</sup> *See id.* at § 185.1 (c) (which defines “[r]ecords of enduring value (archival records) ... [as] those records worthy of permanent retention and special administration because of the importance of the information they contain for continuing administrative, legal, or fiscal purposes, or for historical or other research.”).

<sup>12</sup> *See* 8 NYCRR § 185.1 (a) (defining the records management officer as “the local officer charged with the responsibility to develop and coordinate the local records management program in accordance with § 57.19 of the Arts and Cultural Affairs Law.”).

<sup>13</sup> *See* Arts and Cultural Affairs Law § 57.19; *see also* 8 NYCRR § 185.2 (a).

<sup>14</sup> *See* 8 NYCRR § 185.2 (b) (1).

<sup>15</sup> *See id.* at § 185.2 (b)(2).

<sup>16</sup> *See* New York State Archives, Records Management, Local Government Schedule LGS-1, <https://www.archives.nysed.gov/records/local-government-record-schedule/lgs-1-title-page>.

<sup>17</sup> *See id.*

<sup>18</sup> *See* New York State Archives, Records Management, Intro for Record Managers, Managing Your Records, *Storing Records*, <https://www.archives.nysed.gov/records/introduction-for-records-managers-managing-your-records>.

---

records); *see also* Suzanne Etherington and Ann Marie Przybyla, The University of the State of New York, The State Education Department, New York State Archives, Government Records Services Pub. No. 76, Inventory and Planning: The First Steps in Records Management at 34 (2003) (defining an official copy as “an original record or a copy of an original record, that is used to meet the minimum retention period for that record; also called ‘record copy’”), [nysed.gov](#) .

<sup>18</sup> *See generally* Penal Law §§ 175.20; 175.25.

<sup>19</sup> *See generally id.* §§ 175.05; 175.10.

<sup>20</sup> *See* Retention and Disposition Schedule for New York Local Government Records (LGS-1), [lgs-1-2022.pdf](#) (nysed.gov) at pg. xxii.

<sup>21</sup> *See* 8 NYCRR § 29.2 (a) (3) (describing the requirement that obstetrical records and records of minor patients must be retained for at least six years, and until one year after the minor patient reaches the age of 21 years); *see also* 10 NYCRR § 405.10(a)(4) (providing that “[m]edical records shall be retained in their original or legally reproduced form for a period of at least six years from the date of discharge or three years after the patient’s age of majority [18 years], whichever is longer, or at least six years after death.”); 10 NYCRR § 751.7(j) (stating that diagnostic and treatment centers must “retain medical records for at least six years after the last date of service rendered to a patient or, in the case of a minor, for at least six years after the last date of service or three years after he/she reaches majority whichever time period is longer.”); 10 NYCRR § 763.7(c) (calling for the retention of clinical records for a period of “not less than six years after discharge” and the retention of minor records for a period “not less than six years after discharge, or three years after they reach majority [18 years], whichever is the longer period.”); 10 NYCRR § 415.22. With regard to the maintenance of Research Records *see, e.g.*, 2 CFR Part 215 (OMB Circular A-110); 42 CFR §§ 93.224, 93.305, 93.317 (collectively Public Health Service requirements for the maintenance of Research Misconduct-related records), 21 CFR § 312.62 (outlining investigator record keeping and record retention responsibilities); and 45 CFR § 164.528 (accounting for disclosures of identifiable health information in the context of research).

<sup>22</sup> *See* 8 NYCRR § 29.2(a)(3).

<sup>23</sup> *Id.*

<sup>24</sup> *See* Operating Procedure 180-9: Human Subject Research Protections Program Policies and Procedures §28; *see also*, 45 CFR § 164.528 (accounting for disclosures of identifiable health information made in the context of research).

<sup>25</sup> *See* Retention and Disposition Schedule for New York Local Government Records (LGS-1), [lgs-1-2022.pdf](#) (nysed.gov), pg. xvii; *see also* 8 NYCRR § 185.8 (describing the retention and preservation of electronic records).

<sup>26</sup> *Id.*

<sup>27</sup> *See* The Sedona Conference, Commentary On: Preservation, Management and Identification of Sources of Information that are Not Reasonably Accessible at 4 and 6 (July 2008), available at <https://thesedonaconference.org/publications>; Federal Rules of Civil Procedure rules 26 (b) (2); 37 (c).

<sup>28</sup> Retention and Disposition Schedule for New York Local Government Records (LGS-1), [lgs-1-2022.pdf](#) (nysed.gov).

<sup>29</sup> Arts and Cultural Affairs Law § 57.29.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *See* 8 NYCRR §§ 185.7, 185.8.

<sup>33</sup> 42 CFR § 425.314 (b) (providing, in pertinent part, that all records “sufficient to enable the audit, evaluation, investigation and inspection of the ACO’s compliance with program requirements, quality of services performed, right to any shared savings payment, or obligation to repay losses, ability to bear the risk of potential losses, and ability to repay any losses to CMS”, must be maintained “for a period of ten years from the final date of the agreement period or from the date of completion of any audit, evaluation or inspection, whichever is later.”).

<sup>34</sup> *Id.* at § 425.314 (b) (2) (i).

<sup>35</sup> *Id.* at § 425.314 (b) (2) (ii) (requiring that where “[t]here has been a termination, dispute, or allegation of fraud or similar fault against the ACO, its ACO participants, its ACO providers/suppliers, or other individuals or entities performing functions or services related to ACO activities” that “ACOs must retain records for an additional 6 years from the date of any resulting final resolution of the termination, dispute, or allegation of fraud or similar fault.”).

<sup>36</sup> *See* New York State Archives, Topics, Active Records, <https://www.archives.nysed.gov/records/topic-active-records>

<sup>37</sup> *See* New York State Archives, Topics, Inactive Records, <https://www.archives.nysed.gov/records/topic-inactive-records> .

<sup>38</sup> *See* New York State Archives, Records Management, Historical Records, <https://www.archives.nysed.gov/records/topic-historical-records>; *see also* Warren F. Broderick, New York State



---

Archives, Archives Technical Information Series Pub. No. 36, Intrinsic Value of Local Government Archival Records at 1 (rev. 2002).

<sup>39</sup> Gloria A. Bartowski, New York State Archives, Local Government Records Technical Information Series Pub. No. 40, Fundamentals of Managing Local Government Archival Records at 1 (1995) (providing that archival records are “worthy of permanent retention because of continuing importance of the information they contain for administrative, legal, fiscal and historical value.”),

[https://www.archives.nysed.gov/sites/archives/files/mr\\_pub40.pdf](https://www.archives.nysed.gov/sites/archives/files/mr_pub40.pdf); *see also* 8 NYCRR § 185.1 (c) (defining records of enduring value as “those records worthy of permanent retention and special administration because of the importance of the information they contain for continuing administrative, legal, or fiscal purposes, or for historical or other research.”).

<sup>40</sup> *See* Appraisal of Local Government Records for Historical Value at 7,

[https://www.archives.nysed.gov/sites/archives/files/mr\\_pub50.pdf](https://www.archives.nysed.gov/sites/archives/files/mr_pub50.pdf).

<sup>41</sup> *Id.* at 6.

<sup>42</sup> *Id.* at 20.

<sup>43</sup> 8 NYCRR § 185.6 (b).

<sup>44</sup> *Id.*

<sup>45</sup> *See* 10 NYCRR § 401.3 (i).

<sup>46</sup> 10 NYCRR § 401.3 (i) (stating that “[n]o medical facility shall discontinue operation or surrender its operating certificate . . . without first obtaining the commissioner’s written approval of a plan for the maintenance, storage and safekeeping of its patients’ medical records. The plan shall provide adequate safeguards for these records, make them accessible to the patients and their physicians, and may provide for their ultimate disposition.”); *see also* DOH Facility Closure Plan Guidelines, *General Information*.

<sup>47</sup> 10 NYCRR § 401.3 (i).

<sup>48</sup> *See* Arts and Cultural Affairs Law § 57.31 (requiring that “[a]ll local government records shall be kept in secure facilities maintained by the local government unless the consent of the commissioner of education is obtained to the transfer and storage elsewhere.”).

<sup>49</sup> *See generally*, New York State Archives, Preservation, <https://www.archives.nysed.gov/preservation/archives-management-preservation>.

<sup>50</sup> *See generally* New York State Archives, Preservation, <https://www.archives.nysed.gov/preservation/archives-management-preservation>.

<sup>51</sup> *Id.*

<sup>52</sup> *See generally* 42 CFR § 482.24(b)(3); *see also* CMS State Operations Manual, Appendix A, Survey Protocol, Regulations and Interpretive Guidelines for Hospitals § 482.24(b)(3), Preventing Unauthorized Access, [som107up\\_a\\_hospitals.pdf](https://www.cms.gov/107up_a_hospitals.pdf) ([cms.gov](https://www.cms.gov)).

<sup>53</sup> *See id.*

<sup>54</sup> CMS State Operations Manual Appendix A, Survey Protocol, Regulations and Interpretive Guidelines for Hospitals § 482.24(b)(3) [som107up\\_a\\_hospitals.pdf](https://www.cms.gov/107up_a_hospitals.pdf) ([cms.gov](https://www.cms.gov)); *see also* New York State Archives, Preservation, <https://www.archives.nysed.gov/preservation/archives-management-preservation>.

<sup>55</sup> *See* New York State Archives, Preservation, <https://www.archives.nysed.gov/preservation/archives-management-preservation>.

<sup>56</sup> *See* 8 NYCRR § 185.9; *see also* New York State Archives, Records Management, Records Advisory: Using a Data Storage Vendor, Outsourcing data storage, <https://www.archives.nysed.gov/records/using-data-storage-vendor>.

<sup>57</sup> *See* 8 NYCRR § 185.9 (which mandates that any agreement for storage of local government records in facilities that are not owned or maintained by that government entity must “meet criteria established by the commissioner and must be approved by the commissioner.”); *see also* New York State Archives, Records Management, Records Advisory: Using a Data Storage Vendor, Outsourcing data storage, <https://www.archives.nysed.gov/records/using-data-storage-vendor>.

<sup>58</sup> *See* New York State Archives, Records Management, Local Government Schedule LGS-1, <https://www.archives.nysed.gov/records/local-government-record-schedule/lgs-1-title-page>.

<sup>59</sup> *See* 8 NYCRR § 185.6 (d).

<sup>60</sup> *See* 45 CFR § 164.530(g). *See also* 65 Fed. Reg. 82461, 82563 (Dec. 28, 2000).

<sup>61</sup> *See* Labor Law §§ 740 (1)(e), 741(1)(f).

**[Click here for schedule](#)**

**New York City Health and Hospitals Records Retention and Disposal Schedule**

## **Attachment II**

Form 2845 Application and Authorization for Records Disposal



<b>APPLICATION REVIEWED BY</b>		
<b>Facility RMO (Corporate RMO for Central Office Requests):</b>		
Name	Title	Phone
Signature _____		Date ___/___/___
<b>APPLICATION APPROVED BY</b>		
Permission is requested to perform the disposal/destruction of the records identified on the front of this form. None of these records have any significant historical, legal, fiscal, research, or educational value. We understand that it is the responsibility of the requisitioning facility or Central Office unit to ensure that records necessary for audit, litigation, investigatory, or contractual purposes are not destroyed.		
<b>Executive Director or Senior Vice President:</b>		
Name	Title	Phone
Signature _____		Date ___/___/___
<b>ACCEPTABILITY AS TO LEGAL FORM</b>		
Any records eligible for disposal that must be held for litigation, condition order or settlement of litigation, have been identified and have been deleted from this request.		
<b>Senior Vice President &amp; General Counsel (or designee):</b>		
Name	Title	Phone
Signature _____		Date ___/___/___
<b>DISPOSAL AUTHORIZED BY</b>		
<b>Corporate RMO:</b>		
Name	Title	Phone
Signature _____		Date ___/___/___
<b>REMARKS &amp; ATTACHMENTS (if any)</b>		
Remarks:		
[ ] Attachment(s) (if "YES", please check the box and describe the nature of the attachment(s)):		
<b>DESTRUCTION CERTIFIED BY</b>		
Witness Name & Title	Witness Signature	Date Signed ___/___/___
Method of Destruction		Date of Destruction ___/___/___