

Data Use Agreement
Between
New York State Department of Health
And
Centers for Disease Control and Prevention ("CDC"), National Healthcare Safety Network
("NHSN")

The New York State Department of Health (NYSDOH) and CDC/NHSN enter into this Data Use Agreement (the "Agreement") effective 07 / 01 / 2018 ("Effective Date"). CDC/NHSN and the NYSDOH shall be referred to individually as a "Party," or collectively as the "Parties."

This Agreement establishes a formal data access and data use relationship between CDC/NHSN and the NYSDOH. This Agreement covers individual- and institution-identifiable data, received by the CDC/NHSN subject to the Federal Privacy Act, 5 USC §§552 and 552a, from the NHSN Patient Safety Component and Healthcare Personnel Safety Component as listed in the attached document that have been voluntarily submitted to NHSN by healthcare institutions in New York and for which there is no State or applicable local mandate for reporting of such individual- or institution-identifiable data ("COVERED DATA"). However, COVERED DATA shall NOT include data pertaining to federal or tribal healthcare institutions. Only data obtained solely pursuant to this Agreement shall be considered COVERED data.

The Parties shall abide by all applicable Federal and State laws, rules, and regulations including, without limitation, all patient confidentiality and medical record requirements and any applicable Institutional Review Board ("IRB") requirements.

STATE'S OR MUNICIPALITY'S USES OF COVERED DATA

NYSDOH agrees to use the COVERED DATA for surveillance and/or prevention purposes only (e.g., evaluating the impact of a targeted program to reduce central line-associated bloodstream infections). NYSDOH specifically agrees not to use the COVERED DATA obtained under this data use agreement for purpose of public reporting of institution-specific data or any regulatory or punitive actions against healthcare institutions, such as a fine or licensure action. The Parties acknowledge that COVERED DATA is limited to those data specified in the attached document, which identifies the complete set of data items, e.g., facility survey data, central line associated bloodstream infection numerator data, that NYSDOH will have access to as a result of this Agreement.

NYSDOH agrees to designate an NHSN Group Administrator and CDC/NHSN agrees to grant the State's designated NHSN Group Administrator access to the State's COVERED DATA. In the event that the NHSN Group Administrator leaves that role prior to assigning a replacement via the NHSN application, CDC/NHSN requires notification in writing on official letterhead from the signatory or the signatory's successor to assure continuity.

- The designated NHSN Group Administrator for NYSDOH is Valerie Haley, Director, Data Analysis Unit, Bureau of Healthcare-Associated Infections, Albany, NY 12237, email: valerie.haley@health.ny.gov.

Subject to the other provisions of this agreement, NYSDOH agrees that access to individual- and institution-identifiable data provided under the terms of the Agreement will be limited solely to

department staff or contractors who are explicitly authorized to use those data for surveillance and/or prevention purposes only.

DATA PROTECTIONS

CDC's legal authorities to obtain COVERED DATA from healthcare institutions are 42 U.S.C. section 241(a) (Public Health Service Act section 301(a)), pertaining to CDC's broad public health authority to conduct research and investigations, and 42 U.S.C. section 242k (Public Health Service Act section 306), pertaining to the collection of statistical data. CDC's authority to keep the COVERED DATA confidential (i.e., protected from an unauthorized release) is 42 U.S.C. section 242m (Public Health Service Act section 308(d)) and the Federal Privacy Act, 5 USC §§552 and 552a.

NYSDOH acknowledges that Federal statutes, including 18 U.S.C. section 1001 (providing penalties for making false statements to the Government of the United States), may be implicated if the State does not protect the COVERED DATA from release pursuant to this Agreement.

NYSDOH acknowledges that it will be the custodian of COVERED DATA stored in its data files and, as such, will be responsible for establishing and maintaining appropriate administrative, technical, and physical safeguards to prevent unauthorized access to or use of these files, for example, security awareness training and signed rules of behavior for all persons who have access to COVERED DATA, strong passwords and auditing for all access to COVERED DATA, approved encryption of COVERED DATA stored digitally.

NYSDOH will use the following safeguards to protect COVERED DATA stored in its data files: Data will be stored on the secure NYSDOH Local Area Network (LAN). Only NHSN Group users will have access to the secure directory on the LAN server. These staff have been trained on the appropriate handling of confidential data and have signed rules of behavior.

NYSDOH specifically agrees that, except to the extent required otherwise by local, State and federal law, including under a state's or municipality's open records laws, NYSDOH will not release COVERED DATA: to media; for litigation purposes; that is proprietary and if disclosed could cause competitive harm; or to anyone other than department staff or contractors who are explicitly authorized to use those data for surveillance and/or prevention purposes only.

The following State or municipal statutes, regulations, or policies provide additional safeguards that protect against the release of COVERED DATA: Public Officer's Law Articles 6 and 6-A (FOIL and the Personal Privacy Protection Act); Public Health Law (PHL) Articles 23, 27-F and PHL sections 2805-m, 2803-c, 4410 and 10 NYCRR Part 63, section 405.7 and 10 NYCRR Part 50.

NYSDOH agrees to inform CDC/NHSN in advance of any forthcoming changes to State law(s) that will reduce legal safeguards that protect against release of COVERED DATA. NYSDOH acknowledges that CDC/NHSN may terminate the Agreement as a result of this information.

PROVISION AND MANAGEMENT OF THE DATA

NYSDOH acknowledges that its access to COVERED DATA will be for adverse healthcare events and/or processes of care that occur subsequent to signing this agreement, specifically occurring on or after the first day of the fourth month following the signing date. COVERED DATA reported to NHSN for prior events or processes will not be accessible.

NYSDOH agrees to notify CDC in the event that the NYSDOH is obligated or chooses to release COVERED DATA for a purpose other than surveillance and prevention.

TERM AND TERMINATION OF AGREEMENT

This Agreement shall be effective for a period of 5 years beginning on the Agreement Effective Date, The Agreement may be terminated before the 5-year period upon submission by either Party of written notice by Signatory or Signatory successor, in which case the Agreement shall cease 5 days after the date that CDC/NHSN submits the notice to the NYSDOH OR 5 days after CDC/NHSN receives a notice submitted by the NYSDOH.

In addition, upon CDC/NHSN's knowledge of a pattern or practice that constitutes a material breach of this Agreement by NYSDOH, CDC/NHSN may immediately and unilaterally terminate this Agreement.

CDC requires that in the absence of a conflict with State or local law the NYSDOH must delete or otherwise destroy COVERED DATA stored in its files within one year of the conclusion of this Agreement or a successor Agreement. CDC will retain all COVERED DATA in its files.

NOW, THEREFORE, by signing below, the Parties agree that they have read, understand, and agree to the conditions set forth above:

NYSDOH

CDC/NHSN

Signature

Sally Dreslin

**Sally Dreslin
Executive Deputy Commissioner**

Signature

David Pollock

**Branch Chief, Surveillance Branch
CDC Division of Healthcare Quality
Promotion**

Date

6/29/18

Date

July 3, 2018