County of Schenectady
NEW YORK

ANTHONY JASENSKI
CHAIR OF THE LEGISLATURE

GEOFFREY T. HALL
CLERK OF THE LEGISLATURE

SCHENECTADY COUNTY LEGISLATURE
County Office Building
620 State Street – 6th Floor
Schenectady, New York 12305
Tel: (518) 388-4280 Fax: (518) 388-4591
Website: www.schenectadycounty.com

SEPTEMBER 2023
COMMITTEE MEETING SCHEDULE

DATE: 1 September 2023
TO: Honorable Schenectady County Legislators
FROM: Geoffrey T. Hall; Clerk of the Legislature
SUBJECT: Committee Meetings
Tuesday, September 5, 2023
620 State Street
Legislative Chambers
Sixth Floor – 7:00 PM

7:00 P.M.	Committee on Codes, Judiciary & Consumer Affairs Legislator Frisoni, Chair	page 1
Followed by:	Committee on Health, Housing & Human Services Legislator Ostrelich, Chair	page 17

Schenectady County Legislature

Committee on Codes, Judiciary and Consumer Affairs

Hon. Pete Frisoni, Chair

6th Floor County Office Building 620 State Street, Schenectady, New York 12305
Phone: (518) 388-4280 Fax: (518) 388-4591

DATE: September 1, 2023
TO: Honorable Schenectady County Legislators
FROM: Geoffrey T. Hall, Clerk of the Legislature
SUBJECT: COMMITTEE AGENDA
Committee on Codes, Judiciary and Consumer Affairs
Honorable Pete Frisoni, Chair
Tuesday, September 5, 2023 at 7:00 p.m
Schenectady County Office Building,
Legislative Chambers, Sixth Floor

Item		Title	Sponsor	Co-Sponsors
CJCA	9	A RESOLUTION TO ACCEPT MONIES FROM THE NYS BOARD OF ELECTIONS FOR TECHNOLOGY INNOVATION AND ELECTION RESOURCE INITIATIVES	Legislator Frisoni	
CJCA	10	A RESOLUTION TO AUTHORIZE THE COUNTY OF SCHENECTADY TO COMMENCE A LAWSUIT AGAINST VARIOUS INSULIN MANUFACTURERS AND OTHER NECESSARY DEFENDANTS, AND TO ENTER INTO AN AGREEMENT WITH THE LAW FIRM OF NS PR LAW SERVICES LLC D/B/A NAPOLI SHKOLNIK, PLLC FOR LEGAL REPRESENTATION	Legislator Frisoni	

LEGISLATIVE INITIATIVE FORM

Date: 9/1/2023
Reference: Codes, Judiciary and Consumer Affairs
Dual Reference:
Initiative: CJCA 9

Title of Proposed Resolution:

A RESOLUTION TO ACCEPT MONIES FROM THE NYS BOARD OF ELECTIONS FOR TECHNOLOGY INNOVATION AND ELECTION RESOURCE INITIATIVES

Purpose and General Idea:

Authorization to Amend a Multi-Year Agreement with the New York State Board of Elections for the Technology Innovation and Election Resource Grant Program.

Summary of Specific Provisions:

Authorizes the acceptance of an additional $37,568.26 in funding from the NYS Board of Elections for the Technology Innovation and Election Resource Grant Program (TIER) with a new term starting April 7, 2021 and ending March 31, 2024. In April, 2021, the County was originally awarded $154,382.77 with a term starting April 7, 2021 and ending January 27, 2023.

Effects Upon Present Law:

None.

Justification:

Elections Commissioners Laura Fronk and Darlene Harris have indicated that the additional $37,568.26 has been made available by the State to account for technology costs associated with County Boards across the state. Mrs. Fonk and Mrs. Harris will use the funds to purchase a new ballot printer.

Sponsor: Legislator Frisoni

Co-Sponsor:

COUNTY OF SCHENECTADY

RORY FLUMAN
COUNTY MANAGER

OFFICE OF THE COUNTY MANAGER
620 STATE STREET
SCHENECTADY, NEW YORK 12305

TELEPHONE: (518) 388-4355
FAX: (518) 388-4590

To: Honorable Chairperson and Members of the Legislature

From: Rory Fluman, County Manager

CC: Geoffrey T. Hall, Clerk of the Legislature
Alissa Foster, Deputy Clerk of the Legislature
Laura Fronk & Darlene Harris, Board of Election Commissioners

Date: September 1, 2023

RE: Authorization to Amend a Multi-Year Agreement with the New York State Board of Elections for the Technology Innovation and Election Resource Grant Program

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Attached is a memorandum from Laura Fronk and Darlene Harris, Board of Election Commissioners, requesting authorization to amend a multi-year agreement with the New York State Board of Elections for its Technology Innovation and Election Resource Grant program. In April 2021, the County was originally awarded $154,382.77 with a term starting April 7, 2021 and ending January 27, 2023.

Under this amended agreement, Schenectady County has been allocated an additional $37,568.26 to account for technology costs associated with County Boards across the state. As Ms. Fronk and Ms. Harris indicate, the allocation of these funds will help the County purchase a new ballot printer. This amended agreement has a new term starting April 7, 2021 and ending March 31, 2024.

I recommend your approval.

COUNTY OF SCHENECTADY - CONDADO DE SCHENECTADY
Office of the Board of Election
Oficina de la Junta Electoral
2696 Hamburg Street, Suite 1, Schenectady, New York 12303
Tel./Llame: (518) 377-2469
Fax/Fax: (518) 377-2716
www.voteschenectady.com

Laura Fronk
Darlene Harris
Commissioners
Comisarias Electorales

Cynthia Vincitore Nebolini
Loretta Rigney
Deputy Commissioners
Vice Comisarias Electorales

TO: Hon. Geoffrey T. Hall, Clerk of the Legislature

FROM: Laura Fronk & Darlene Harris, Commissioners

CC: Rory Fluman, Christopher Gardner, Jaclyn Falotico

DATE: August 16, 2023

RE: Acceptance of additional funds for the Technology Innovation and Election Resource Grant

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New York State Capital Projects Budget authorized $25,000,000 in the SFY 2021/22 budget and in the FY 2023-2024 budget, the New York State Legislature reappropriated those existing funds and appropriated an additional $15 million for costs associated with technology for County Boards for actual expenses related to upgrades of software, technology updates and equipment. Schenectady County has been allocated an additional $37,568.26 to the original amount of $154,382.77. Eligible expenses must take place between April 7, 2021 and March 31, 2024.

We have earmarked these new funds plus the remaining funds to purchase a new commercial printer for ballot printing.

We respectfully ask the Legislature to accept the additional grant funds. Thank you for your consideration.

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

STATE AGENCY (Name & Address): New York State Board of Elections 40 North Pearl Street, Suite 5 Albany, NY 12207	BUSINESS UNIT/DEPT. ID: BOE01/1110000 CONTRACT NUMBER: BOE01 - C004384 - 1110000 CONTRACT TYPE: ☐ Multi-Year Agreement ☐ Simplified Renewal Agreement ☒ Fixed Term Agreement
CONTRACTOR SFS PAYEE NAME: Schenectady County	TRANSACTION TYPE: ☐ New ☐ Renewal ☑ Amendment
CONTRACTOR DOS INCORPORATED NAME: N/A	PROJECT NAME: Technology Innovation and Election Resource (TIER) Grant Program
CONTRACTOR IDENTIFICATION NUMBERS: NYS Vendor ID Number: 1000002365 Federal Tax ID Number: 14-6002431 DUNS Number (if applicable):	AGENCY IDENTIFIER: N/A CFDA NUMBER (Federally Funded Grants Only): N/A
CONTRACTOR PRIMARY MAILING ADDRESS: 2696 Hamburg Street, Suite 1 Schenectady NY 12303 CONTRACTOR PAYMENT ADDRESS: ☐ Check if same as primary mailing address CONTRACT MAILING ADDRESS: ☐ Check if same as primary mailing address	CONTRACTOR STATUS: ☐ For Profit ☒ Municipality, Code: ☐ Tribal Nation ☐ Individual ☐ Not-for-Profit Charities Registration Number: N/A Exemption Status/Code: N/A ☐ Sectarian Entity

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

CURRENT CONTRACT TERM:

From: 04/07/2021 To: 01/27/2023

CURRENT CONTRACT PERIOD:

From: 04/07/2021 To: 01/27/2023

AMENDED TERM:

From: 04/07/2021 To: 03/31/2024

AMENDED PERIOD:

From: 04/07/2021 To: 03/31/2024

CONTRACT FUNDING AMOUNT
(*Multi-year* - enter total projected amount of the contract; *Fixed Term/Simplified Renewal* - enter current period amount):

CURRENT: $154,382.77

AMENDED: $ 37,568.26

FUNDING SOURCE(S)

- [x] State
- [ ] Federal
- [ ] Other

FOR MULTI-YEAR AGREEMENTS ONLY - CONTRACT PERIOD AND FUNDING AMOUNT:
(Out years represent projected funding amounts)

#	CURRENT PERIOD	CURRENT AMOUNT	AMENDED PERIOD	AMENDED AMOUNT
1				
2				
3				
4				
5				

ATTACHMENTS PART OF THIS AGREEMENT:

- [x] Attachment A:
  - [x] A-1 Program Specific Terms and Conditions
  - [ ] A-2 Federally Funded Grants
- [x] Attachment B:
  - [x] B-1 Expenditure Based Budget
  - [ ] B-2 Performance Based Budget
  - [ ] B-3 Capital Budget
  - [ ] B-1(A) Expenditure Based Budget (Amendment)
  - [ ] B-2(A) Performance Based Budget (Amendment)
  - [ ] B-3(A) Capital Budget (Amendment)
- [x] Attachment C: Work Plan
- [x] Attachment D: Payment and Reporting Schedule
- [x] Other:
  Attachment E: Funding Schedule

IN WITNESS THEREOF, the parties hereto have executed or approved this Master Contract on the dates below their signatures.

CONTRACTOR:	STATE AGENCY: NYS Board of Elections
Schenectady County	By:
By:	By:
Printed Name	Printed Name
Title:	Title:
Date:	Date:

STATE OF NEW YORK

County of _____

On the ___ day of _____, ____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the _____, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor named on the face page of this Master Contract.

(Notary) _____

ATTORNEY GENERAL'S SIGNATURE	STATE COMPTROLLER'S SIGNATURE
Printed Name	Printed Name
Title:	Title:
Date:	Date:

LEGISLATIVE INITIATIVE FORM

Date: 9/1/2023
Reference: Codes, Judiciary and Consumer Affairs
Dual Reference:
Initiative: CJCA 10

Title of Proposed Resolution:

A RESOLUTION TO AUTHORIZE THE COUNTY OF SCHENECTADY TO COMMENCE A LAWSUIT AGAINST VARIOUS INSULIN MANUFACTURERS AND OTHER NECESSARY DEFENDANTS, AND TO ENTER INTO AN AGREEMENT WITH THE LAW FIRM OF NS PR LAW SERVICES LLC D/B/A NAPOLI SHKOLNIK, PLLC FOR LEGAL REPRESENTATION

Purpose and General Idea:

Provides authorization to enter into a Legal Service Contract with NY PR Law Services d/b/a/ Napoli Shkolnil, PLLC

Summary of Specific Provisions:

Authorizes the County to enter into a legal service contract with NY PR Law Services d/b/a/ Napoli Shkolnil, PLLC to assist the County with legal claims against manufacturers of insulin and other diabetic medication, pharmacy benefits manager (PBM), and their executives as it relates to artificially inflating the cost of insulin from as far back as 2003.

Effects Upon Present Law:

None.

Justification:

Christopher Gardner, County Attorney, indicates, that the insulin manufacturers listed in the proposal are Eli Lilly, Norvo Nordisk, and Sanofi-Aventis, and they produce over 90% of the global insulin supply. These manufacturers gave PBM undisclosed kickbacks for favorable placement on their formulary,by inflating prices, both the manufacturers and PBM would benefit. NY PR Law Services would be entitled to one-third of any gross amount recovered, however there is no cost to the County for this litigation.

Sponsor: Legislator Frisoni

Co-Sponsor:

COUNTY OF SCHENECTADY

RORY FLUMAN
COUNTY MANAGER

OFFICE OF THE COUNTY MANAGER
620 STATE STREET
SCHENECTADY, NEW YORK 12305

TELEPHONE: (518) 388-4355
FAX: (518) 388-4590

To: Honorable Chairperson and Members of the Legislature

From: Rory Fluman, County Manager

CC: Geoffrey T. Hall, Clerk of the Legislature
Alissa Foster, Deputy Clerk of the Legislature
Christopher Gardner, County Attorney

Date: September 1, 2023

RE: Authorization to Enter into a Legal Services Contract with NY PR Law Services d/b/a Napoli Shkolnik, PLLC

Attached is a memorandum from Christopher Gardner, County Attorney, requesting authorization to enter into a legal services contract with NY PR Law Services d/b/a Napoli Shkolnik, PLLC to assist the County with legal claims against manufacturers of insulin and other diabetic medication, pharmacy benefit managers (PBM), and their executives as it relates to artificially inflating the costs of insulin from as far back as 2003.

The insulin manufacturers listed in this proposal are Eli Lilly, Norvo Nordisk, and Sanofi-Aventis, and they produce over 90% of the global insulin supply. According to Mr. Gardner, these manufactures gave the PBM undisclosed kickbacks for favorable placement on their formulary. By inflating prices, both the manufactures and the PBM would benefit.

While there is no cost to the County for this litigation, NY PR Law Services would be entitled to one-third of any gross amount recovered.

I recommend your approval.

COUNTY OF SCHENECTADY
OFFICE OF THE COUNTY ATTORNEY
Inter-Department Correspondence Sheet

To: Rory Fluman, County Manager

From: Christopher H. Gardner, County Attorney CHG

Dated: August 24, 2023

Copies to: Geoffrey Hall, Clerk of the Legislature
M. Joe Landry, Counsel to the Legislature
Jaclyn Falotico, Commissioner of Finance
Erin Laiacona, Director of Public Communications

Re: Approval for Litigation Against Three Insulin Manufacturers (Eli Lilly, Norvo Nordisk and Sanofi-Aventis) and Other Necessary Defendants, including Pharmacy Benefit Managers (PBM's) for Conspiring to Artificially Inflate Costs of Global Insulin Supply
(Legal Dept. File No. 23.128)

I am recommending that you forward to the County Legislature for its consideration a proposal from the law firm of Napoli Shkolnik that the County of Schenectady retain NY PR Law Services d/b/a Napoli Shkolnik, PLLC, in the prosecution of any legal claims against manufacturers of insulin and other diabetic medication, pharmacy benefit managers (PBM's) and/or their executives based upon their actions in fixing prices, engineering kickbacks, and engaging in other antitrust violations or other wrongdoing with respect to insulin and other diabetic medication. I have attached a copy of the proposed Legal Services Contract.

Fee: One-Third Contingency Fee Case:

There is no cost to the County for this litigation. The law firm is entitled to one-third (33.33%) of the gross amount recovered. The firm shall also be reimbursed for reasonable disbursements incurred during the course of litigation. The law firm is representing numerous plaintiffs and is part of the MDL (Multi-District Litigation).

The three insulin manufacturers in question produce over 90% of the global insulin supply. It has been discovered that since at least 2003, these manufacturers, which constitute a classic oligopoly, have been conspiring to artificially inflate their list prices. The manufacturers, upon information and belief, were also making undisclosed kickbacks to PBM's under the guise of rebates, discounts, credits or administrative fees. Our proposed law firm alleges that these payments served as an illegal ***quid pro quo*** for inclusion and favorable placement on their PBM's formulary. The law firm has concluded that the PMB's profited from this scheme by retaining significant undisclosed payments from the three insulin manufacturers and in fact incentivized manufacturers to inflate list prices thereby benefitting both the PBM's and the manufacturers.

I recommend that the County Legislature authorize the County of Schenectady to enter into the proposed Legal Services Contract and pursue this litigation. If we are successful in this litigation, and a remedy for damages is granted back to 2003, there will be substantial damages payable to the County.

This proposed legal action is just one of many tactics utilized by our County to reduce the County's cost of prescription medication. This aggressive approach which has included our 20-year Canadian drug program—the longest continuous program of its type in the United States has paid off—Schenectady County's prescription drug costs for employees are now lower than they were in 2003.

CHG/kah
Attachments

LEGAL SERVICES CONTRACT

THIS CONTRACT IS SUBJECT TO ARBITRATION UNDER THE FEDERAL ARBITRATION ACT

E-Mail or Fax to: **NSPR Law Services d/b/a Napoli Shkolnik**
pnapoli@nsprlaw.com

WHEREAS, the undersigned, _____ ("Client") agrees to retain the law office of NS PR Law Services LLC d/b/a Napoli Shkolnik PLLC ("Law Firm") (collectively, "Parties") as Client's attorneys in the prosecution of any legal claim against manufacturers of insulins and other diabetic medication, pharmacy benefit managers ("PBMs") and/or their executives based upon their actions in fixing prices, engineering kickbacks, and engaging in other antitrust violations or other wrongdoing with respect to insulin and other diabetic medication. The Parties specifically agree as follows:

1. **FEE PERCENTAGE:** As consideration for legal services rendered and to be rendered by the Attorneys in carrying out the purpose hereof, Client agrees to pay Law Firm 33.33% (thirty-three and one third percent) of all gross amounts recovered, including the value of any injunctive or non-monetary relief. If the non-monetary relief has a concrete value, the contingency fee of 33.33% will be based on that amount. If there is no concrete value on the non-monetary relief then the Law Firm's fee will be based on an agreed upon value between the Client and Law Firm. Further, if the action is certified as a class action, the law firm shall request an award of common benefit fees and compensation to be award within the discretion of the court irrespective of the stated retainer amount. Client assigns, and the Law Firm accepts and acquires as its fee, a proportionate interest in the subject matter of any claim, action, or suit instituted or asserted under the provisions of this agreement. All expenses and costs will be deducted after the contingent fee calculation. Any liens and subrogation are to be deducted after the contingent fee is calculated.

2. **DISBURSEMENTS:** The Law Firm shall be reimbursed all reasonable expenses associated with the legal services being rendered including, but not limited to, legal research, long distance telephone calls, fax, postage, copying, travel, litigation, and expert expenses. Costs shall also include, but not be limited to, any "MDL Assessment" imposed by any Multi-District Litigation ("MDL") Court or withheld from any settlement or favorable judgment by any defendant. In addition to the above listed individual costs, there may be common benefit costs. Common benefit costs are costs expended for the common benefit of a group of clients. For example, if a deposition of a defendant expert witness is taken in one case, and this deposition can be used for and/or benefits the claims of many other clients, these costs will be classified as common benefit costs. By using this common benefit cost system, no one client has to solely bear the costs which actually benefit the group as a whole, and many of the most substantial costs of litigation can be shared equally by all. Client grants a special privilege to the Law Firm for their professional fees, expenses, costs, interest, and loans, on all

monies and properties recovered or obtained for Client. Client's repayment of costs and expenses is contingent on the outcome from any funds received on the claim in question.

3. **FINANCING OF CASE:** If the firm borrows money from any lending institution to finance the cost of the client's case, the amounts advanced by this firm to pay the cost of prosecuting or defending a claim or action or otherwise protecting or promoting the client's interest will bear interest at the highest lawful rate allowed by applicable law. In no event will the interest be greater than the amount paid by the firm to the lending institution.

4. **TAX ADVICE:** The Client understands that the Law Firm will not provide any advice regarding the tax consequences of accepting money from a settlement or award. CLIENT SHOULD CONTACT A TAX PROFESSIONAL REGARDING ANY TAX CONCERNS REGARDING ANY SETTLEMENT PRIOR TO THE SETTLEMENT.

5. **TERMINATION:** The Law Firm expressly reserves the right to withdraw its representation at any time upon reasonable notification to the Client, subject to applicable ethical rules, if any. Should the Client terminate the Law Firm, the Law Firm shall continue to be entitled to its legal fees on any and all sums recovered as a result of the claims.

6. **APPEALS:** The above contingency fee does not contemplate any appeal. The Law Firm is under no duty to perfect or prosecute any such appeal until a satisfactory fee arrangement is made between the Parties and is reduced to writing regarding costs and attorneys' fees.

7. **COUNTERCLAIMS:** The above contingency fee does not contemplate the Law Firm's representation of Client against any claims made by a person against the Clients. The Law Firm is under no duty to defend or prosecute any such claim or counterclaim until a satisfactory fee arrangement is made between the Parties and is reduced to writing regarding costs and attorneys' fees.

8. **STATUTE OF LIMITATIONS:** Client understands that the Statute of Limitations period for the case must be investigated and that this Agreement is made subject to that investigation as well as an investigation of the entire case. Client understands that statutes of limitation may have run on the case and agrees to hold the Law Firm harmless in the event the applicable statutes of limitation have run for any reason.

9. **NO GUARANTEE OF FINAL OUTCOME:** No attorney can accurately predict the outcome of any legal matter. Accordingly, the Law Firm makes no express or implied representations as to the final outcome of the matter(s) contemplated by this Agreement. Client further understands that Client must immediately report any changes in Client's address or telephone number to the Law Firm.

10. **APPROVAL NECESSARY FOR SETTLEMENT:** Client hereby grants the Law Firm power of attorney so that the Law Firm may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations, and papers as shall be reasonably necessary to conclude the representation including settlement and/or reducing to possession any and all monies or other things of value due to Client under its claim as fully as the Client

could do so. The Law Firm is also authorized and empowered to act as Client's sole negotiator in any and all negotiations concerning the subject of this Agreement. To be clear, all decisions regarding final resolution of the litigation, including settlement, are within the sole power of the Client. The decision regarding settlement shall always be held and remain with the Client.

11. **ASSOCIATION OF OTHER ATTORNEYS:** The Law Firm may, at its own expense, use or associate with other attorneys in the representation of the Client. Client understands that the Law Firm is a Professional Limited Liability Company with a number of attorneys. Several of those attorneys may work on Client's case.

12. **ASSOCIATE COUNSEL:** Another attorney may participate in the division of fees in this case and assume joint responsibility for the representation of Client, either in the event that the Law Firm retains associate counsel or in the event that Client later chooses new counsel, provided that the total fee to Client does not decrease as a result of the division of fees and that the attorneys involved have agreed to the division of fees and assumption of joint responsibility.

13. **CLASS ACTION:** Client understands that Attorneys may pursue a class action on behalf of Client and all others similarly situated and client specifically authorizes attorneys to do so. Client understands that Client may serve as a class representative and may be called upon to act in a representative capacity for those who are similarly situated. Client knows of no conflict that would cause Client to be inadequate representative and agrees to vigorously defend the interests of the class if called upon to do so.

14. **NEW YORK STATE LAW TO APPLY:** This Agreement shall be construed under and in accordance with the laws of the State of New York and the rights, duties and obligations of Client and of the Law Firm's representation of Client and the laws of the State of New York shall govern regarding anything covered by this Agreement.

15. **ARBITRATION:** Any and all disputes, controversies, claims or demands arising out of or relating to (i) this Agreement; (ii) any provision of this Agreement; (iii) the provision of services by the Law Firm to Client; and (iv) the relationship between the Parties, whether in contract, tort or otherwise, at law or in equity, for damages or any other relief, shall be resolved by binding arbitration pursuant to the Federal Arbitration Act in accordance with the Commercial Arbitration Rules then in effect with the American Arbitration Association. Client shall not file a class action against at the Law Firm or seek to assert any claims or demands against the Law Firm by or through a class action, either as the named plaintiff or as a member of the class, but rather shall submit his/her claims or demands to binding arbitration. Any such arbitration proceeding shall be conducted in New York. This arbitration provision shall be enforceable in either federal or state court in New York, pursuant to the substantive federal laws established by the Federal Arbitration Act. Any party to any award rendered in such arbitration proceeding may seek a judgment upon the award and any Court in New York having jurisdiction may enter that judgment.

16. **PARTIES BOUND:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and there respective heirs, executors, administrators, legal representative, successors and assigns.

17. **LEGAL CONSTRUCTION:** In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable, such invalidity, herein illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained.

18. **PRIOR AGREEMENTS SUPERSEDED:** This Agreement constitutes the sole and only agreement of the Parties hereto and supersedes all prior understandings or written or oral agreement between the Parties respecting the within subject matter, if any.

Client certifies and acknowledges that Client has had the opportunity to read this Agreement. Client further affirms that Client has voluntarily entered into this Agreement, that Client has been advised that Client may seek legal counsel to review this Agreement before signing, and that Client is fully aware of the terms and conditions contained in this Agreement.

SIGNED AND ACCEPTED ON THIS _____day of_____, 2023

THIS CONTRACT IS SUBJECT TO **ARBITRATION** UNDER THE FEDERAL ARBITRATION ACT	
	NSPR Law Services LLC d/b/a Napoli Shkolnik
Signature:	**By: Salvatore C. Badala**
Address:	**Salvatore C. Badala**
	By:

Schenectady County Legislature

Committee on Health, Housing and Human Services

Hon. Michelle Ostrelich, Chair

6th Floor County Office Building 620 State Street, Schenectady, New York 12305
Phone: (518) 388-4280 Fax: (518) 388-4591

DATE: September 1, 2023
TO: Honorable Schenectady County Legislators
FROM: Geoffrey T. Hall, Clerk of the Legislature
SUBJECT: COMMITTEE AGENDA
Committee on Health, Housing and Human Services
Honorable Michelle Ostrelich, Chair
Tuesday, September 5, 2023 at 7:00 p.m
Schenectady County Office Building,
Legislative Chambers, Sixth Floor

Item		Title	Sponsor	Co-Sponsor
HHHS	0	INFORMATIONAL UPDATE BY COUNTY MANAGER FLUMAN REGARDING ASYLUM SEEKERS	Legislator Ostrelich	
HHHS	0	INFORMATIONAL UPDATE BY COUNTY MANAGER FLUMAN REGARDING COVID-19	Legislator Ostrelich	
HHHS	22	A RESOLUTION TO ACCEPT MONIES FROM THE AMERICAN MEDICAL ALERT CORPORATION/CONNECT AMERICA COMPANY FOR PERSONAL EMERGENCY SYSTEM SERVICES	Legislator Ostrelich	

LEGISLATIVE INITIATIVE FORM

Date: 9/1/2023
Reference: Health, Housing and Human Services
Dual Reference:
Initiative: HHHS 0

Title of Proposed Resolution:

INFORMATIONAL UPDATE BY COUNTY MANAGER FLUMAN REGARDING ASYLUM SEEKERS

Purpose and General Idea:

INFORMATIONAL UPDATE BY COUNTY MANAGER FLUMAN REGARDING ASYLUM SEEKERS

Summary of Specific Provisions:

INFORMATIONAL UPDATE BY COUNTY MANAGER FLUMAN REGARDING ASYLUM SEEKERS

Effects Upon Present Law:

None.

Justification:

INFORMATIONAL UPDATE BY COUNTY MANAGER FLUMAN REGARDING ASYLUM SEEKERS

Sponsor: Legislator Ostrelich

Co-Sponsor:

LEGISLATIVE INITIATIVE FORM

Date: 9/1/2023
Reference: Health, Housing and Human Services
Dual Reference:
Initiative: HHHS 0

Title of Proposed Resolution:

INFORMATIONAL UPDATE BY COUNTY MANAGER FLUMAN REGARDING COVID-19

Purpose and General Idea:

INFORMATIONAL UPDATE BY COUNTY MANAGER FLUMAN REGARDING COVID-19

Summary of Specific Provisions:

INFORMATIONAL UPDATE BY COUNTY MANAGER FLUMAN REGARDING COVID-19

Effects Upon Present Law:

None.

Justification:

INFORMATIONAL UPDATE BY COUNTY MANAGER FLUMAN REGARDING COVID-19

Sponsor: Legislator Ostrelich

Co-Sponsor:

LEGISLATIVE INITIATIVE FORM

Date: 9/1/2023
Reference: Health, Housing and Human Services
Dual Reference:
Initiative: HHHS 22

Title of Proposed Resolution:

A RESOLUTION TO ACCEPT MONIES FROM THE AMERICAN MEDICAL ALERT CORPORATION/CONNECT AMERICA COMPANY FOR PERSONAL EMERGENCY SYSTEM SERVICES

Purpose and General Idea:

Provides authorization to enter into a Multi-Year agreement with the American Medical Alert Corporation/Connect America Company

Summary of Specific Provisions:

Authorizes the County to enter into a Multi-Year Agreement with the American Medical Alert Corporation/Connect America Company.

Effects Upon Present Law:

None.

Justification:

Adrienne Silva, Senior and Long-Term Care Manager indicates, this multi-year agreement is for the personal emergency system services, which is part of the Medical Long-Term Care Program. This agreement is also carried out through a partnership with the Department of Social Services.

Sponsor: Legislator Ostrelich

Co-Sponsor:

COUNTY OF SCHENECTADY

RORY FLUMAN
COUNTY MANAGER

OFFICE OF THE COUNTY MANAGER
620 STATE STREET
SCHENECTADY, NEW YORK 12305

TELEPHONE: (518) 388-4355
FAX: (518) 388-4590

To: Honorable Chairperson and Members of the Legislature

From: Rory Fluman, County Manager

CC: Geoffrey T. Hall, Clerk of the Legislature
Alissa Foster, Deputy Clerk of the Legislature
Adrienne Silva, Senior and Long-Term Care Services Manager

Date: September 1, 2023

RE: Authorization to Enter into a Multi-Year Agreement with the American Medical Alert Corporation/Connect America Company

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Attached is a memorandum from Adrienne Silva, Senior and Long-Term Care Services Manager, requesting authorization to enter into a Multi-Year Agreement with the American Medical Alert Corporation/Connect American Company. As Ms. Silva indicates, this multi-year agreement is for personal emergency system services, which is part of the Medicaid Long Term Care Program. This is also carried out through a partnership with the Department of Social Services.

I recommend your approval.

SCHENECTADY COUNTY
DEPARTMENT OF
SENIOR AND LONG TERM CARE SERVICES

107 Nott Terrace, Suite 305
Schenectady, NY 12308-3170
Tel: (518) 382-8481
Fax: (518) 382-0194

Manager: Adrienne Silva

To: Rory Fluman, County Manager

From: Adrienne Silva. SLTCS Department Manager

CC: Jaclyn Falotico, Commissioner of Finance
Christopher Gardner, County Attorney
Jennifer Nelson, Director, Management & Budget
Michelle Cohen, Coordinator Family Support & LTC
Mary Forman, SLTC Planner
Marylou Riddle, Executive Secretary

Re: Contract Approval – Department of Social Services/Office of Senior and Long Term Care Services – Multi-Year Agreement for Personal Emergency System Services

Date: August 21, 2023

We are requesting Legislative acceptance of a Multi-Year Agreement for Personal emergency System Services with the American Medical alert Corporation/Connect America Company. These services are part of our Medicaid Long Term Care Program in association with Schenectady County Department of Social Services.

We are requesting that this budget amendment be presented to the Schenectady County Legislature Committee Meeting for consideration on Tuesday, September 5, 2023.

The mission of the Schenectady County Department of Senior and Long Term Care Services is to promote the long term health and well-being of Schenectady County residents and assure that they receive the necessary community-based services that they are entitled to in order to remain safely in the community. These services are provided without regard to race, color, sex, (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status.

AGREEMENT

BETWEEN A SOCIAL SERVICES DISTRICT AND A PROVIDER OF PERSONAL EMERGENCY RESPONSE SERVICES (PURSUANT TO TITLE 11 OF ARTICLE 5 OF THE SOCIAL SERVICES LAW AND TITLE XIX OF THE SOCIAL SECURITY ACT)

FOR TITLE XIX SERVICES ONLY

AGREEMENT between the Schenectady County Department of Social Services (referred to in this Agreement as the Social Services District) located at 107 Nott Terrace. Suite 305 Schenectady, NY 12305 and American Medical Alert Corporation/Connects America Company, a Personal Emergency Response Services provider (referred to in this Agreement as the Provider), which has its principal offices at 30-30 47th Avenue, Long Island City, NY 11101

WHEREAS, the Social Services District, pursuant to Section 367-g of the Social Services Law (SSL) and New York State Department of Health Regulation 18 NYCRR § 505.33 may authorize personal emergency response services (PERS) to be provided to Medical Assistance (MA) recipients whom the Social Services District has determined eligible to receive these services; and

WHEREAS, the Social Services District is authorized, pursuant to Section 365.1(d) of the SSL and 18 NYCRR § 505.33(d), to enter into written agreements for the provision of PERS for which reimbursement is available pursuant to Title XIX of the Federal Social Security Act ("SSA"), Section 367-g of the SSL, and 18 NYCRR § 505.33; and

WHEREAS the Provider represents that it will provide PERS as authorized by the Social Services District pursuant to Title XIX of the SSA, Section 367-g of the SSL, and 18 NYCRR § 505.33; and

WHEREAS, the Social Services District and the Provider have determined to enter into this written Agreement pursuant to which the Provider will provide PERS to MA recipients whom the Social Services District has determined eligible to receive these services.

THEREFORE, the Social Services District and the Provider agree as follows:

1. <u>Social Services District's Authorization of PERS:</u>

   The Social Services District is responsible for determining whether MA recipients are eligible to receive PERS, as defined in 18 NYCRR § 505.33(a), and for authorizing and reauthorizing PERS for MA recipients whom it determines eligible to receive PERS. The Social Services District's eligibility determinations, authorizations, and reauthorizations for PERS will be in accordance with 18 NYCRR § 505.33(c) and such directives to social services districts as the Department may issue.

2. <u>Provider's Provision of PERS:</u>

   The Provider agrees to provide PERS to MA recipients whom the Social Services District has determined eligible to receive PERS and has authorized or reauthorized to receive PERS. The Provider agrees that its provision of PERS will be in accordance with 18 NYCRR § 505.33(a) and (f) and such directives to PERS providers as the Department may issue.

3. <u>Standards for PERS Equipment:</u>

   The Provider agrees to assure that all PERS equipment complies with the PERS equipment standards set forth in 18 NYCRR § 505.33 (g) and such directives to PERS providers as the Department may issue.

4. Training of Monitoring Agency Staff:

The Provider agrees to assure that staff of the monitoring agency, as defined in 18 NYCRR § 505.33 (a), are fully trained regarding their responsibilities when the monitoring agency receives signals for help from MA recipients' PERS equipment.

5. Payment for PERS:

The Social Services District agrees to authorize payment to the Provider for PERS that are provided to MA recipients whom the Social Services District has determined eligible for PERS and has authorized or reauthorized to receive PERS and that are provided in accordance with the Social Services District's authorization or reauthorization, 18 NYCRR § 505.33, and such directives as the Department may issue. The Social Services District agrees to authorize payment to the Provider at the rates set forth in Appendix B of this Agreement, provided that such rates have been established pursuant to 18 NYCRR § 505.33(h). The rates set forth in Appendix B of this Agreement are the total payment to the Provider, and no additional payment to the Provider will be made by the Department, the Social Services District, or the PERS recipient. The Social Services District will authorize that payment to the Provider terminate on the day that the District sends a written notification to the Provider that it must remove the PERS equipment from the former PERS recipient's home.

6. Social Services District's Monitoring:

The Provider agrees that its provision of PERS is subject to the monitoring of the Social Services District in accordance with 18 NYCRR § 505.33(e) and such directives as the Department may issue.

7. Quality of Services:

This Agreement does not diminish the Provider's responsibility for maintaining the quality of PERS the Provider provides. The Provider agrees to remain responsible for the following:

A. ensuring that PERS provided pursuant to this Agreement complies with all pertinent provisions of federal and State law and regulations; and

B. ensuring the quality of PERS provided by the Provider or any entity with which the Provider has a subcontract.

8. Non-Exclusive Agreement:

The Social Services District is not obligated to use the Provider's services. The Social Services District or the Department may, in its discretion and upon written notice to the Provider, terminate the Provider's responsibility to provide PERS to any one or more MA recipients. Such termination of the Provider's responsibility to provide PERS to any one or more MA recipients does not render this Agreement void or voidable.

9. Provider as Independent Contractor:

The Provider agrees that the Provider is an independent contractor and not an employee, officer, or agent of the Social Services District or the Department. The Provider agrees that the Provider and the Provider's employees, officers, and agents will conduct themselves in accordance with this status and neither hold themselves out as, nor claim to be, employees, officers, or agents of the Social Services District or the Department. The Provider also agrees that neither the Provider nor the Provider's employees, officers, or agents will make any claim for any right or privilege applicable to a Social Services District or Department employee, officer, or agent including, but not limited to, Worker's Compensation or retirement benefits.

10. Liability and Other Insurance:

The Provider agrees that, prior to providing PERS under this Agreement, it will obtain liability or other insurance in sufficient amounts to protect the Social Services District and the Department and their officers, employees, and agents from any liability relating to the provision of PERS that may arise as a result of any acts, omissions, or negligence of the Provider or of the Provider's officers, employees, or agents. Such insurance coverage may be an endorsement to an existing policy of the Provider. The Provider agrees to maintain such coverage while this Agreement is in effect. The Provider also agrees that, regardless of the form or manner of the Provider's insurance coverage and prior to providing PERS under this Agreement, the Provider will request its insurer to provide the Social Services District with a written acknowledgment of the Provider's insurance coverage, the terms of the Provider's insurance coverage, and a commitment that the insurer or the Provider will notify the Social Services District at least ten calendar days before the effective date of any change in, or cancellation of, the Provider's insurance coverage.

11. Indemnification:

The Provider agrees to indemnify and hold harmless the Social Services District and the Department and their employees, officers, and agents against any liability resulting from the Provider's performance or failure to perform in accordance with the terms of this Agreement.

12. Provider's Recordkeeping Responsibilities:

A. The Provider agrees to complete all required employer payroll records and deduct all tax, insurance, and other required payments including, but not limited to, Worker's Compensation; disability insurance; Social Security notes; federal and State unemployment insurance benefits; federal, State and local income tax withholdings; and any other legal or customary requirements.

B. The Provider agrees to maintain records and accounting procedures that properly reflect all direct and indirect costs expended in the performance of this Agreement. The Provider also agrees to collect and maintain all fiscal and program statistical records required by the Social Services District or the Department on forms the Social Services District supplies and the Department has approved.

C. At all times during the term of this Agreement and for a period of six years after final payment, the Provider agrees to provide all authorized representatives of the Social Services District, the Department, and the State and federal governments with full access to all records relating to the Provider's performance under, and funds payable pursuant to, this Agreement for the purpose of examination, audit and copying of such records.

D The Provider will comply with all applicable federal and State requirements governing the confidentiality of information relating to Medical Assistance recipients including, but not limited to, Section 1902(a)(7) of the Social Security Act and SSL Section 369, the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Health Information Technology for Economic and Clinical Health Act and implementing regulations at 45 CFR Parts 160 and 164, and any regulations promulgated in accordance with federal and State statutory provision, and with 18 NYCRR Section 360-8.1. The Provider and the Social Services District will execute the HIPAA Business Associate Agreement, Appendix B-4 to this Agreement.

E. The Provider agrees to maintain all records and other documents required by this Section 12 of this Agreement or otherwise relevant to this Agreement for six years after final payment.

13. Notice of Provider's Subcontracts and Other Agreements:

The Provider agrees to notify the Social Services District or the Department of any affiliated entities with which it has direct or indirect agreements, subcontracts for services, or any other arrangement under which the amounts the Provider receives as payment for PERS are shared among, or transferred between, the Provider and any other entity or entities. If the Provider directly or indirectly disburses any amount to any entity receiving payment from any governmental agency, it agrees to notify the Social Services District or the Department of the nature, type, amount, and date of any such disbursement.

14. Employment Practices:

The Provider agrees to comply with the nondiscrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relating to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin; the implementing regulations prescribed by the Secretary of Labor at 41 Code of Federal Regulations (CFR), Part 60; and the federal regulations contained in 45 CFR Part 84, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance."

15. Fair Hearings:

The Social Services District will provide notices to PERS recipients or applicants of their right to State fair hearings as required by federal and State law and regulations. The Provider, upon request of the Department or the Social Services District, agrees

to participate in State fair hearings when necessary for the determination of issues. The Provider also agrees to participate, as requested by the Social Services District or the Department, in any endeavor's incident to the provision of PERS including, but not limited to, testimony for fair hearings; reports, surveys, studies, or audits; court or judicial proceedings; and any other matters relating to the Provider's provision of PERS.

16. Termination of this Agreement

A. By the Social Services District:

1. The Social Services District may terminate this Agreement under the following circumstances:

(i) The Department notifies the Social Services District that federal, or State reimbursement is no longer available for PERS.

(ii) The Provider fails to perform its obligations pursuant to this Agreement, including any local variations that are set forth in any Appendix B-3 of this Agreement, or the Provider violates any of the material terms of this Agreement.

(iii) The Department has sanctioned the Provider for conduct that constitutes an unacceptable practice under the MA program.

(iv) The Social Services District has determined that each of the MA recipients to whom the Provider furnished PERS is no longer eligible for MA or PERS.

(v) The Social Services District has determined that an emergency exists which could jeopardize the health, safety, or welfare of MA recipients to whom the Provider furnishes PERS.

(vi) The Provider has become insolvent, provided that such insolvency does not result from nonpayment or late payment to the Provider of funds due pursuant to this Agreement.

(vii) A voluntary or involuntary proceeding under the Bankruptcy Act is commenced by or against the Provider, provided that the cause for the commencement of such proceeding was not the nonpayment or late payment to the Provider of funds due pursuant to this Agreement; or

(viii) The Social Services District and the Provider have agreed that the Social Services District may terminate this Agreement under other circumstances set forth in any Appendix B-3 of this Agreement, and such other circumstances have occurred.

2. Except in an emergency, the Social Services District agrees to give the Provider thirty calendar days written notice of its intention to terminate this Agreement. The written notice must contain the reasons for the

Social Services District's termination of this Agreement and the effective date of this Agreement's termination.

B. By the Provider:

1. The Provider may terminate this Agreement under the following circumstances:

   (i) The Department revises the requirements for the Provider's provision of PERS and the Provider reasonably finds these requirements unacceptable.

   (ii) The Department has reduced the rates paid to the Provider, as set forth in Appendix B-2 of this Agreement, and the Provider reasonably finds such reduced rates to be unacceptable; or

   (iii) The Social Services District and the Provider have agreed that the Provider may terminate this Agreement under other circumstances set forth in any Appendix B-3 of this Agreement, and such other circumstances have occurred.

2. The Provider agrees to give the Social Services District thirty calendar days written notice of its intention to terminate this Agreement. The written notice must contain the reasons for the Provider's termination of this Agreement and the effective date of this Agreement's termination.

C. By Mutual Agreement:

This Agreement may be terminated by the mutual agreement of the Social Services District and the Provider.

17. Agreement Close-out Procedures:

The Provider agrees to comply with all Social Services District and Department close-out procedures when this Agreement terminates or expires. These close-out procedures include, but are not necessarily limited to, the following:

A. Within five business days after this Agreement terminates or expires, the Provider agrees to transfer to the Social Services District, or the Social Services District's designee, a copy of the Provider's records pertaining to all MA recipients to whom the Provider previously furnished, or is currently furnishing, PERS pursuant to this Agreement.

B. Within thirty calendar days after this Agreement terminates or expires, the Provider agrees to notify the Social Services District in writing of all obligations relating to this Agreement that the Provider necessarily incurred before this Agreement terminated or expired and that came due after this Agreement terminated or expired. The Social Services District agrees to authorize payment to the Provider in accordance with this Agreement for such obligations. The Social Services District will not authorize payment to

the Provider for any obligations that the Provider incurs or pays after this Agreement terminates or expires.

C. Within thirty calendar days after this Agreement terminates or expires, the Provider agrees to account for, and refund to, the Social Services District any overpayments or excess funds paid to the Provider pursuant to this Agreement.

D. Within ninety calendar days after this Agreement terminates or expires, the Provider agrees to submit to the Social Services District a final report, completed by a certified public accountant, of the Provider's receipt and expenditure of funds pursuant to this Agreement.

18. Agreement to Renegotiate:

The Social Services District and the Provider agree to renegotiate this Agreement if the federal or State government revises the requirements for PERS, and these revisions would affect the continued availability of PERS reimbursement or payment.

19. Amendments:

The Social Services District and the Provider agree to amend this Agreement when they determine amendments are necessary. No such amendment will be effective until the Department has approved it. All amendments must be in writing, signed by authorized representatives of the Social Services District and the Provider, and attached to this Agreement.

20. Local Variations:

Local variations, if any, are set forth in an Appendix B-3 attached to, and made a part of, this Agreement. Such local variations are effective only if the Department has sent the Social Services District a written approval of the local variations. If any local variations conflict with the main body of this Agreement, the main body of this Agreement controls unless the Social Services District and the Provider have specified otherwise in a separate agreement that the Department has approved and that is attached to this Agreement.

21. Entire Agreement:

This Agreement, including all appendices and any documents incorporated by reference, contains all the terms and conditions agreed upon by the Social Services District and the Provider. All appendices and items incorporated by reference are to be attached to this Agreement. No other precedent or contemporaneous agreement, oral or written, regarding the subject matter of this Agreement, is deemed to vary any of the terms and conditions contained in this Agreement or bind either the Social Services District or the Provider.

22. **Effective Dates:**

This Agreement is effective on January 1, 2023 and shall remain in effect unless terminated pursuant to the provisions of Article 16 of this Agreement.

23. **Signatures:**

In Witness Whereof, the parties hereunto have signed and executed this Agreement on the date(s) indicated opposite their respective signature.

Schenectady County	American Medical Alert Corp. Provider (Print or Type)
107 Nott Terrace, Suite 305 Address	30-30 47th Ave., Suite 620 Address
Schenectady, NY 12308	Long Island City, NY 11101
Beverly Hillard-Boudin Commissioner Name	Richard Brooks, President Name & Title of Representative (Print or Type)
Commissioner Signature	Signature of Provider
County Attorney Date	02193943 7/25/23 eMedNY ID# Date

STATE OF ~~NEW YORK~~ Pennsylvania)
COUNTY OF Montgomery)

Rory Fluman County Manager

On this 25th day of July 2023, before me personally appeared Richard Brooks to me known, who being by me duly sworn did depose and say that Richard Brooks resides at 3030 47th Ave, Ste 620 Long Island City, New York; that Richard Brooks is the Vice President of American Medical Alert Corp the New York corporation described in and which executed the within instrument; that Richard Brooks knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that Richard Brooks signed name by like order.

Shirley A Thrower
Notary Public

Commonwealth of Pennsylvania - Notary Seal
SHIRLEY A THROWER - Notary Public
Philadelphia County
My Commission Expires January 19, 2030
Commission Number 1210017

Appendix B-1

18 NYCRR § 505.33 Personal emergency response services (PERS).

a) Definitions.

(1) Personal emergency response services mean:

(i) the provision and maintenance of electronic communication equipment in the home of an individual which signals a monitoring agency for help when activated by the individual, or after a period of time if a timer mechanism has not been reset; and

(ii) the continuous monitoring of such signals by a trained operator and, in case of receipt of such signals, the immediate notification of such emergency response organizations or persons, if necessary, as the individual has previously specified.

(2) Electronic communication equipment (PERS equipment) means equipment that electronically signals a monitoring agency for help via telephone lines. PERS equipment includes the following:

(i) an emergency response activator, which is a small electronic device that the PERS recipient presses or otherwise activates to send a signal for help to the monitoring agency; and

(ii) an emergency response communicator, which is an electronic unit connected to a PERS recipient's telephone line. The emergency response communicator accepts a signal for help from the emergency response activator and also has its own device to generate a signal for help. It sends the signal via telephone lines to the monitoring agency.

(3) Monitoring agency means an agency that is capable of receiving signals for help from a recipient's PERS equipment 24 hours per day, seven days per week; determining whether an emergency exists; and notifying an emergency response organization or an emergency responder that the PERS recipient needs emergency help.

(4) Emergency response organization means a police department, a fire department, an ambulance service, a hospital, or other entity that the PERS recipient has designated to respond to specific signals for help when notified by the monitoring agency or an emergency responder.

(5) Emergency responder means a PERS recipient's neighbor, family member, or other person who has agreed, at the recipient's request, to respond to specific signals for help when notified by the monitoring agency.

(6) PERS provider means a certified home health agency, a long term home health care program, an area agency on aging, a police department, a fire department, an ambulance service, a hospital, or any other entity that is capable of providing PERS either directly or through subcontracts. A PERS provider may also be a monitoring agency.

b) Social services districts' PERS plans.

(1) Each social services district must submit a PERS plan to the department on a form the department requires and must not authorize PERS until the department has approved the district's PERS plan. Each social services district must submit any changes to its approved PERS plan to the department on a form the department requires. The district may include such changes to its approved PERS plan as part of the district's annual plan for the provision of personal care services, as required by section 505.14(j) of this Part.

(2) A social services district's PERS plan must be in a form acceptable to the department and must include descriptions of the following:

(i) the process the social services district will use to authorize PERS;

(ii) the PERS equipment that the social services district will require to be used, including whether the equipment will have a voice-to-voice capability;

(iii) the process by which the social services district will select the PERS providers with which it will contract;

(iv) the coordination among the social services district, the PERS providers with which it will contract, and any entities with which the PERS providers will subcontract; and

(v) the projected cost savings that PERS will achieve.

(3) The department will notify a social services district of its approval or disapproval of the district's PERS plan within 45 business days after it receives the plan. If the department disapproves a social services district's PERS plan, the district must submit a revised plan to the department within 30 business days after the day the district receives the department's disapproval notice.

c) PERS assessments, authorizations, and reauthorizations.

(1) As part of its assessment for an authorization of personal care services or home health services, a social services district may also assess whether PERS would be appropriate for a person.

(2) An initial authorization for PERS must be based on a physician's order and a comprehensive assessment of the person

(i) The comprehensive assessment must be performed by social services district staff, or by staff of the district's designee, on forms that the department approves to be used.

(ii) The comprehensive assessment must evaluate the following factors: the person's physical disability status, the degree to which the person is at risk of an emergency due to a medical or functional impairment or disability, and the degree of the person's social isolation.

(iii) A social services district may authorize PERS only when the comprehensive assessment indicates that PERS would be appropriate for the person because:

(a) the person has a medical condition, disability, or impairment that warrants use of PERS;

(b) PERS would reduce or eliminate the number of hours of personal care services or home health services that the person would need (See GIS 04 MA/029 for clarification);

(c) the person's safety in the home must be monitored;

(d) the person has insufficient informal caretakers, such as family members and friends, directly and continuously available to monitor his or her health and safety;

(e) the person is alert and self-directing, which means that he or she is capable of making choices about activities of daily living, understanding the impact of the choices, and assuming responsibility for the results of the choices;

(f) the person can communicate in basic English or, if the person is unable to communicate in basic English, the person's emergency responder or responders can communicate in basic English;

(g) the person would be able to use the PERS equipment effectively; and

(h) the person has a functioning telephone that is compatible with the PERS equipment or will have such a telephone when the PERS equipment is installed.

(3) If a social services district authorizes PERS, the PERS authorization and plan of care may be incorporated in the authorization and plan of care for personal care services or home health services.

(4) The duration of an initial PERS authorization must be based upon the person's needs, as reflected in the comprehensive assessment. No initial authorization may exceed six months.

(5) When a PERS recipient's physical circumstances, mental status, or medical condition significantly change during the authorization period, social services district staff, or staff of the district's designee, must perform a new comprehensive assessment and make any necessary changes in the authorization.

(6) A social services district must not authorize PERS if the person is eligible for the long term home health care program (LTHHCP), can obtain PERS through the LTHHCP, and wishes to obtain PERS through the LTHHCP.

(7) A reauthorization of PERS must follow the procedures set forth in paragraphs (2) through (6) of this subdivision, except that the recipient's physician, the social services district's local professional director, or a physician at the area Office of Health Systems Management must review the comprehensive assessment and be responsible for the final determination to reauthorize PERS. No single reauthorization may exceed six months.

(8) A social services district must notify the person in writing of its decision to authorize, deny, reauthorize, or discontinue PERS on forms required by the department. The notice must meet the notice requirements set forth in Part 358 of this Title. The person will be entitled to a fair hearing in accordance with the requirements of Part 358 of this Title. A PERS recipient for whom the social services district proposes to discontinue PERS will be entitled to aid continuing in accordance with the requirements of Part 358 of this Title.

(d) Contracting for PERS.

(1) A social services district must have contracts with a sufficient number of PERS providers to provide PERS to all persons for whom the district has authorized PERS.

(2) Before contracting with any PERS provider, a social services district must determine that the provider is qualified to provide PERS either directly or through subcontracts and can meet this

section's requirements and any local requirements contained in the district's approved PERS plan described in subdivision (b) of this section.

(3) A social services district's contracts with PERS providers must be on a form that the department has approved to be used. A district may attach local variations to the form. A district must not implement any contract for PERS or any local variations until the department has approved the contract and any local variations.

(4) A PERS provider must maintain appropriate insurance coverage to protect the social services district from liability claims resulting from acts, omissions, or negligence of provider personnel that cause personal injuries to PERS recipients or such personnel.

(e) Responsibilities of social services districts.

(1) A social services district must ensure that the PERS recipient designates an emergency response organization; one emergency responder or, if possible, two such responders; a representative, who may be the same person as an emergency responder; and a preferred hospital. The district must also ensure that the PERS recipient, or his or her representative, signs a written authorization for emergency response organization personnel and an emergency responder to enter the recipient's home and provide emergency treatment and transportation.

(2) On the day that a social services district authorizes PERS, it must perform the following activities:

(i) telephone the PERS provider and inform the provider:

(a) of the name, telephone number, and address of the person the social services district has authorized PERS;

(b) that the provider must telephone the person of the person's representative that same day to arrange a mutually convenient time for the provider to install the PERS equipment into the person's functioning telephone line; and

(c) that the provider must install the PERS equipment within seven business days after the day the provider receives a written PERS authorization from the social services district and that, if the provider cannot install the equipment within this seven day period, it must immediately notify the district.

(ii) send the PERS provider a written PERS authorization; and

(iii) send the PERS provider the information regarding the person that is described in clauses (f)(3)(i)(a) through (g) of this section.

(3) If a PERS recipient's physical circumstances, medical condition, or mental status change during the authorization period, the social services district must send to the PERS provider the information regarding these changes so that the provider may update the recipient's data record, as described in subparagraph (f)(3)(i) of this section.

(4) (i) Subject to the notice, aid continuing, and fair hearing requirements set forth in subdivision (c)(8) of this section and Part 358 of this Title, a social services district must discontinue PERS when the recipient is continuously hospitalized for more than 60 days or when his or her physical

circumstances, mental status, or medical condition has changed significantly so that PERS are no longer appropriate for the person. Whenever a social services district discontinues PERS because PERS are no longer appropriate for the recipient, the district must ensure that personal care services, if appropriate, are provided to the recipient.

(ii) On the day that the social services district discontinues PERS, it must perform the following activities:

(a) telephone the PERS provider and inform the provider that it must telephone the recipient or the recipient's representative that same day to arrange a mutually convenient time for the PERS equipment's removal, and that the provider must remove the PERS equipment within seven business days after the day the provider receives the district's written notification to remove the equipment; and

(b) send the PERS provider a written notification to remove the PERS equipment.

(5) A social services district must monitor a PERS provider's compliance with this section's requirements. The district must monitor the timeliness of the provider's installation, maintenance, and removal of PERS equipment; the timeliness and efficiency of the monitoring agency's responses to signals for help from recipients' PERS equipment; the timeliness of the provider's reports of emergencies; the reliability of PERS equipment; and all complaints by PERS recipients regarding the PERS provider or the PERS equipment.

(f) Responsibilities of PERS providers.

(1) A PERS provider must properly install all PERS equipment into a PERS recipient's functioning telephone line and must furnish all supplies necessary for installing this equipment.

(i) On the day that the PERS provider receives the district's telephoned PERS authorization, it must telephone the recipient or the recipient's representative to arrange a mutually convenient time for the provider to install the PERS equipment into the recipient's functioning telephone line. The PERS provider must install the PERS equipment within seven business days from the day it receives the district's written PERS authorization. If the provider is unable to install the PERS equipment within this period, it must notify the district immediately.

(ii) On the day that the PERS provider installs the PERS equipment, it must perform the following activities:

(a) telephone the social services district and notify it that the equipment has been installed;

(b) instruct the PERS recipient regarding the use of the PERS equipment and give the PERS recipient simple written instructions that describe these procedures;

(c) inform the PERS recipient that he or she should immediately notify the provider or the social services district if the equipment malfunctions; and

(d) inform the PERS recipient that he or she may call the monitoring agency when he or she wants to test the PERS equipment or when he or she has questions regarding the PERS equipment.

(iii) At the PERS recipient's or the social services district's request, the PERS provider must give follow-up instructions to the recipient regarding his or her use of the PERS equipment.

(iv) Within seven business days after the day the PERS equipment is installed, the PERS provider must forward to the social services district, by mail or facsimile machine, a written confirmation that the equipment has been installed and that the PERS recipient has been instructed how to use the equipment. The confirmation must be signed by a representative of the provider and by the PERS recipient or the recipient's representative.

(2) A PERS provider must maintain all installed PERS equipment in proper working order.

(i) The PERS provider must monitor all installed PERS equipment to insure that the equipment operates properly at all times. The provider's monitoring of the PERS equipment should be automated and result in the least possible inconvenience to the PERS recipient.

(ii) The PERS provider must replace PERS equipment batteries when necessary, at no additional cost to the social services district, the department, or the recipient.

(iii) Within 24 hours after the PERS provider is notified that any PERS equipment has malfunctioned, the provider must repair or replace the equipment at no additional cost to the social services district, the department, or the recipient. The PERS provider may be notified that the PERS equipment has malfunctioned by the social services district, the PERS recipient, the PERS recipient's representative, or another responsible party. When any PERS equipment is repaired or replaced, the PERS provider must notify the social services district by telephone within 24 hours.

(3) A PERS provider must maintain the following records at no additional cost to the social services district or the department:

(i) a data record for each PERS recipient. The provider must update this record at least every six months by contacting the social services district. The provider must also update the recipient's data record whenever the social services district notifies the provider that changes should be made to the PERS recipient's data record. Each PERS recipient's data record must contain the following information, which the social services district will send to the provider on the day it authorizes PERS and whenever the social services district is informed that such information has changed:

(a) the PERS recipient's name, telephone number, and address, including his or her apartment number and floor, if applicable;

(b) the PERS recipient's personal medical history, including his or her age, sex, medical condition, diagnosis, and other relevant medical history;

(c) the name, telephone number, and address of the person or persons whom the PERS recipient has designated as the emergency responder or responders;

(d) the name, telephone number, and address of the person whom the PERS recipient has designated as his or her representative, if different from an emergency responder;

(e) the name, telephone number, and address of the police department, fire department, ambulance service, hospital, or other entity that the PERS recipient has designated as an emergency response organization;

(f) the PERS recipient's written authorization for the emergency response organization and an emergency responder to enter his or her home and provide emergency treatment and transportation; and

(g) the name, telephone number, and address of the PERS recipient's physician and the recipient's preferred hospital.

(ii) a record of the PERS provider's instructions to the PERS recipient regarding his or her use of the PERS equipment;

(iii) a record of the PERS equipment's installation and removal;

(iv) a record of the maintenance of PERS equipment and any repairs or replacements of malfunctioning equipment that were necessary;

(v) a record of the monitoring agency's 24-hour monitoring of PERS recipients;

(vi) a record of each signal for help from a recipient's PERS equipment that the monitoring agency receives and the monitoring agency's response to the signal; and

(vii) a record of PERS recipients whom the monitoring agency monitors each month.

(4) (i) The PERS provider must ensure that the monitoring agency performs the following activities when the monitoring agency receives a signal for help from a recipient's PERS equipment:

(a) if the PERS recipient's equipment has voice-tovoice capability, establish immediate verbal contact with the PERS recipient via the incoming signal to determine whether an emergency exists at the PERS recipient's home;

(b) retrieve the PERS recipient's data record;

(c) if unable to establish immediate verbal contact with a PERS recipient whose quipment has voice-to-voice capability, or if the PERS recipient's equipment lacks such capability, immediately notify an emergency responder that the PERS recipient has signaled for help;

(d) if unable to notify an emergency responder, immediately notify an emergency response organization that the PERS recipient has signaled for help;

(e) maintain appropriate contact with the PERS recipient, the emergency responder, or the emergency response organization; and

(f) monitor the provision of emergency services to verify that these services have been provided and that the emergency at the PERS recipient's home has been resolved.

(ii) The PERS provider must telephone the social services district on the first business day after the emergency occurred and inform it of the nature of the emergency and how it was

resolved. The provider must forward to the social services district, by mail or facsimile machine, a written report of the emergency within seven business days after the day the emergency occurred. This report must contain at least the information described in paragraphs (3)(v) and (vi) of this subdivision.

(5) The PERS provider must ensure that the monitoring agency can continuously monitor and respond to signals for help from recipients' PERS equipment during power failures, mechanical malfunctions, or other technical emergencies. The provider must ensure that the monitoring agency has the monitoring capabilities specified in subdivision (g)(2) of this section.

(6) A PERS provider must remove PERS equipment from a recipient's home when notified to do so by the social services district. The provider must not remove PERS equipment unless the district has notified it that the equipment must be removed.

(ii) On the day the social services district telephones the PERS provider and notifies it that PERS equipment must be removed, the provider must telephone the recipient or the recipient's representative to arrange a mutually convenient time for the equipment's removal.

(iii) The PERS provider must remove PERS equipment within seven business days after the day the provider receives the social services district's written notification that PERS equipment must be removed.

(iiii) On the day the PERS equipment is removed, the PERS provider must notify the social services district by telephone of the equipment's removal.

(iiv) Within seven business days after the day the PERS equipment is removed, the PERS provider must forward to the social services district, by mail or facsimile machine, a written confirmation that the equipment has been removed. The confirmation must be signed by a representative of the provider and by the former PERS recipient or his or her representative.

(g) Standards for PERS equipment and monitoring agencies.

(1) All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard Number 1637, which is the UL safety standard for home health care signaling equipment. (Standard for Home Health Care Signaling Equipment, UL 1637, First Edition, May 30, 1989, effective January 2, 1991; published by Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois, 60062. Copies are available for public use and inspection at the Department of State, 162 Washington Avenue, Albany, New York, 12231.) The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard.

(ii) The emergency response activator must be activated either by breath, by touch, or by some other means and must be usable by persons who are visually or hearing impaired or physically disabled.

(iii) The emergency response communicator must be attached to the PERS recipient's telephone line and must not interfere with normal telephone use. The emergency response communicator must be capable of operating without external power during a power failure

at the recipient's home in accordance with UL requirements for home health care signaling equipment with standby capability.

(2) The monitoring agency must be capable of simultaneously responding to multiple signals for help from recipients' PERS equipment. The monitoring agency's equipment must include the following:

(ii) a primary receiver and a back-up receiver, which must be independent and interchangeable;

(iii) a back-up information retrieval system;

(iiii) a clock printer, which must print out the time and date of the emergency signal, the PERS recipient's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;

(iiv) a back-up power supply;

(iv) separate telephone service; and

(ivi) a telephone line monitor, which must give visual and audible signals when an incoming telephone line is disconnected for more than 10 seconds.

(3) The monitoring agency must maintain detailed technical and operations manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment; emergency response protocols; and recordkeeping and reporting procedures.

(h) Payment for PERS.

(1) A social services district must negotiate payment rates for PERS at or below rates included in a rate schedule established by the department with the approval of the Director of the Budget. A social services district must not negotiate PERS payment rates that exceed local prevailing PERS rates.

(2) PERS rates must include payment for the rental or lease of PERS equipment; the installation, maintenance, and removal of PERS equipment; and a monthly service charge for monitoring agency services.

(3) The social services district must submit all negotiated PERS rates to the department for approval.

(4) Payments for PERS will be made only when the PERS provider's claim is supported by documentation required by section 540.7(a)(8) of this Title.

(5) Payments for PERS must end the day the social services district sends the PERS provider written notification that PERS equipment must be removed from the recipient's home.

Appendix B-2

PERSONAL EMERGENCY RESPONSE SERVICES RATES

The rates listed below will be paid for PERS for the period covered in this contract.

County: Schenectady County

Provider Name: American Medical Alert Corporation

Provider Address 30-30 47th Avenue, Suite 620, Long Island City, NY 11101

Provider eMedNY ID# 01293943

RATE CODE	DESCRIPTION	AMOUNT
2513	PERS Installation Charge	$50.00

S5160 PERS One-time installation $50.00. Installation is performed in person for all landline systems. Cellular and Mobile PERS Devices are simply "plug and play" systems and in most times direct shipped to the member with easy-to-follow directions included. There is no installation cost to the organization. In the event that a member cannot perform a "plug and play" self-activation, upon request, an installer will be provided.

2514	PERS Monthly Service Charge	$ 25.00

(for SDSS use only)

Effective Date: _____ Locator Code: _____

Rate Code Type: _____ County Code: _____

DMA Approval: _____ Date: _____

OBM Approval: _____ Date: _____

Contract Approved: _____ Date: _____

To eMedNY Date: _____

Appendix B-3

LOCAL VARIATIONS

None

Appendix B-4

Federal Health Insurance Portability and Accountability Act
Business Associate Agreement (Agreement) Governing Privacy and Security

I. Definitions. For purposes of this Agreement:

a) "Business Associate" shall mean American Medical Alert Corporation Personal Emergency Response Provider.

b) "Covered Program" shall mean Schenectady County Department of Social Services.

c) Other terms used, but not otherwise defined, in this agreement shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH") and implementing regulations, including those at 45 CFR Parts 160 and 164.

II. Obligations and Activities of Business Associate:

a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.

b) Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

d) Business Associate agrees to report to Covered Program as soon as reasonably practicable any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware. Business Associate also agrees to report to Covered Program any Breach of Unsecured Protected Health Information of which it becomes aware. Such report shall include, to the extent possible:

1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
5. Contact procedures for Covered Program to ask questions or learn additional information.

e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received

by Business Associate on behalf of Covered Program agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

f) Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.

g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.

h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.

i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

j) Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this Agreement, to permit Covered Program to comply with 45 CFR § 164.528.

k) Business Associate agrees to comply with the security standards for the protection of electronic protected health information in 45 CFR § 164.308, 45 CFR § 164.310, 45 CFR § 164.312 and 45 CFR § 164.316.

III. Permitted Uses and Disclosures by Business Associate

a) Except as otherwise limited in this Agreement, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this Agreement.

b) Business Associate may use Protected Health Information for the proper management and administration of Business Associate.

c) Business Associate may disclose Protected Health Information as Required By Law.

IV. Term and Termination

a) This Agreement shall be effective for the term as specified on the cover page of this Agreement, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program; provided that, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Appendix to this Agreement.

b) Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this Agreement if

Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

c) Effect of Termination.

1. Except as provided in paragraph (c)(2) below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Program, or created or received by Business Associate on behalf of Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
2. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual Agreement of Business Associate and Covered Program that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

V Violations

a) Any violation of this Agreement may cause irreparable harm to the County. Therefore, the County may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.

b) Business Associate shall indemnify and hold the County harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this Agreement. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the County from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation; provided, however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the County.

VI. Miscellaneous

a) Regulatory References. A reference in this Agreement to a section in the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.

b) Amendment. Business Associate and Covered Program agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Program to comply with the requirements of HIPAA, HITECH and 45 CFR Parts 160 and 164.

c) Survival. The respective rights and obligations of Business Associate under (IV)(C) of this Appendix to this Agreement shall survive the termination of this Agreement.
d) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Program to comply with HIPAA, HITECH and 45 CFR Parts 160 and 164.
e) HIV/AIDS. If HIV/AIDS information is to be disclosed under this Agreement, Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.