

## APPENDIX D

### Notice of Privacy Practices

*THIS NOTICE OF PRIVACY PRACTICES (THIS "NOTICE") DESCRIBES HOW CLINICAL INFORMATION ABOUT OUR PARTICIPANTS, KNOWN AS PROTECTED HEALTH INFORMATION, MAY BE USED AND DISCLOSED, AND HOW OUR PARTICIPANTS' PARENTS, GUARDIANS OR PERSONAL REPRESENTATIVES, CAN ACCESS THIS INFORMATION. **IN ORDER TO MAKE THIS NOTICE AS READABLE AS POSSIBLE, THE WORD "YOU" REFERS TO OUR PARTICIPANTS, EVEN THOUGH THIS NOTICE IS DIRECTED TO THEIR PARENTS, GUARDIANS AND PERSONAL REPRESENTATIVES. PLEASE REVIEW THIS NOTICE CAREFULLY.***

The federal Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (collectively, "HIPAA"), the federal Genetic Information Nondiscrimination Act of 2008, and New York State law to the extent that such law is more stringent than HIPAA, place certain obligations upon us with regard to your protected health information and require that we keep confidential any medical or mental health information that identifies you. In addition, the privacy and confidentiality of mental health information that we maintain is subject to protections under federal and state laws which in some situations go beyond the protections provided by law generally for health information treated as Protected Health Information. Therefore, throughout this Notice, "Protected Health Information" or "PHI" shall refer to all of your clinical information, including both medical and mental health information, and the privacy practices described in this Notice are intended to comply with the additional privacy protections for mental health information as required by such federal and state laws.

This Notice describes the privacy practices with respect to PHI of our agency, its staff, and affiliated service providers that jointly provide services to you. We take these privacy obligations seriously. When we need to use or disclose your PHI, we will comply fully with the terms of this Notice. Moreover, anytime we are permitted or required to share your PHI with others, we will provide only the **minimum** amount of information **necessary** to comply with such disclosures, unless otherwise permitted or required by law.

In addition, this Notice will address the application of the federal Family Educational Rights and Privacy Act ("FERPA") to clinical information that we maintain for those participants receiving funds under programs administered by the U.S. Department of Education. Such clinical information is treated as educational records under FERPA, rather than as PHI under HIPAA.

We are required to provide you with a copy of this Notice. In addition, you are able to view or obtain a copy of this Notice by accessing our website at <http://www.gershautism.com>, contacting your provider/therapist, or asking for a copy at the time of your next visit.

*If you have any questions about this Notice or would like further information, please contact **The School at 631-385-3342 ext. 359.***

## **USES AND DISCLOSURES OF YOUR PHI THAT DO NOT REQUIRE SPECIFIC AUTHORIZATION**

With your general written consent (which we must obtain before providing services to you), we are permitted by law to use and disclose your PHI under the circumstances described below. This means that, once we obtain your general consent, we do not have to ask you again before we use or disclose your PHI to provide you with treatment, seek payment for our services, or conduct our normal business operations.

We also may use or disclose your PHI without specifically asking you for authorization for certain other purposes as described elsewhere in this Notice. Other uses and disclosures, some of which are described in this Notice, will be made only with your specific written authorization or as otherwise described herein. You may revoke such specific authorization at any time, to be effective prospectively, *i.e.*, your revocation will not be effective with respect to actions which we took in reliance on your specific authorization prior to your revocation.

- Treatment, Payment & Operations. Your PHI may be used by personnel within our agency (or its “business associates”) in connection with their duties to provide you with treatment, to obtain payment for that treatment, or to conduct our agency’s business operations. A business associate is any person or entity, other than a member of the Gersh workforce, who performs services involving the creation, receipt, maintenance, or transmission of your PHI on behalf of Gersh.

We may reveal your PHI to persons outside of this agency when we have obtained your written consent. In addition, we may reveal your PHI to persons outside of this agency without your specific written authorization under the following circumstances:

- Other Health Care Providers. To other providers who are currently serving you, who previously served you, and who will be serving you, if such providers are licensed or regulated by the New York State Office of Mental Health.
- Emergency Services. To licensed hospital emergency services.
- Personal Representative. To a personal representative who is authorized to make health care decisions on your behalf.
- Court Order. Pursuant to a court order from a court with appropriate jurisdiction.
- Health and Safety/Public Health. Where necessary to prevent or lessen a serious and imminent threat to your health and safety or the health and safety of other persons, and for certain public health activities as required by law, including, without limitation: (i) to report health information to public health authorities for the purpose of preventing or controlling disease, injury or disability; (ii) to report certain immunization information, such as to the state immunization registry or to your school; and (iii) to alert any person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition.
- Law Enforcement Officials. To appropriate federal and state authorities to locate a missing person or conduct a criminal investigation as permitted under federal and state laws and

regulations, to report violations of law as provided pursuant to the New York State Mental Hygiene Law and 45 C.F.R. § 164.502(j)(1), or as otherwise required or authorized pursuant to New York State law.

- Mental Hygiene Legal Services. To New York State agencies offering mental hygiene-related legal services.
- Attorneys. To an attorney representing you in an involuntary hospitalization or medication proceeding. However, we will not disclose your PHI to an attorney for any other purpose without your authorization, unless we are ordered to do so by a court with appropriate jurisdiction.
- Health Oversight Activities. To an authorized health oversight agency for the purpose of monitoring or evaluating the quality of care provided by this agency and its staff, or to assist with audits, inspections, or investigations designed for ensuring compliance with governmental health care programs and applicable laws.
- Research. We may use and disclose your PHI without your authorization to a researcher who has received approval through an Institutional Review Board process as required by HIPAA, provided that such researcher will not disclose information that identifies you. However, in most cases, we will ask for your written authorization before using PHI about you or sharing it with others in order to conduct research.
- Victims of Abuse, Neglect, Domestic Violence. Where we have reason to believe that you may be a victim of abuse, neglect or domestic violence, to the proper governmental authorities, including social or protective service agencies, which require, or are authorized by law to receive, such reports.
- Decedents. To a medical examiner or coroner for purposes of identifying or determining the cause of your death.
- De-identified Information. If we have removed any information that might reveal who you are.
- As Required by Law. We may use or disclose your PHI under any other circumstances where we would be required to do so by federal or state law.

While your specific written authorization is not required with respect to the following two situations, generally you will be given an opportunity to agree or object to disclosures of your PHI prior to any such disclosure being made by Gersh:

- Disclosures to Relatives, Close Friends, Caregivers. To family members and relatives, close friends, caregivers or other individuals whom you may identify, so long as we: (i) affirmatively obtain your approval; (ii) provide you with the opportunity to object to the disclosure, and you do not object; or (iii) reasonably infer that you would not object to the disclosure. If you are not present or, due to incapacity or emergency, you are unable to agree or object to a use or disclosure, we may exercise our professional judgment in order to determine whether such use or disclosure would be in your best interests. Where we disclose PHI to a family member, other relative, close friend, or other individual, we would disclose only that information we believe is directly relevant to such person's involvement with your care or payment for your care. Also, we will disclose your PHI in order to notify or assist with notifying such persons of

your location, general condition or death. You may at any time request that we not disclose your PHI to any of these individuals.

### **SPECIAL USES AND DISCLOSURES OF YOUR PHI THAT REQUIRE SPECIFIC AUTHORIZATION**

In general, we will need your **specific written authorization** to use or disclose your PHI for the following purposes and any purpose not listed above, unless such use or disclosure without your specific authorization would otherwise be permitted or required by law. You may revoke such authorization at any time by writing to the Gersh HIPAA Privacy Officer.

- Psychotherapy and ABA Notes. We must obtain your specific written authorization prior to disclosing any psychotherapy or ABA notes. However, there are certain purposes for which we may disclose psychotherapy or ABA notes without obtaining your specific authorization: (i) to carry out certain treatment, payment or health care operations (e.g., for purposes of your treatment, for our own training, and to defend ourselves in a legal action or other proceeding brought by you); (ii) to the Secretary of the Department of Health and Human Services to determine our compliance with federal law; (iii) as otherwise required by federal or state law; (iv) for health oversight activities authorized by law; (v) to medical examiners or coroners as required or permitted by state law; or (vi) for the purposes of preventing or lessening a serious or imminent threat to the health or safety of a person or the public.
- Receipt of Remuneration for Certain Disclosures of PHI. From time to time, we may receive remuneration, directly or indirectly, from a business associate or other third party in exchange for some or all of your PHI, which remains subject to HIPAA protections. However, we must obtain your specific written authorization prior to releasing such information, except with respect to activities for treatment, public health or research purposes. You are not obligated to provide us with such specific authorization, in which case we will not release your PHI to such business associate or third party for purposes other than treatment, public health or research purposes, or as otherwise permitted in accordance with this Notice. If you do provide us with your written authorization, you have a right to revoke your authorization at any time.
- Fundraising & Marketing Activities. From time to time, we may contact you to solicit tax-deductible contributions to support our fundraising activities. You may also be contacted about opportunities to attend workshops and webinars which may result in a financial benefit for our agency. In doing so, we may use certain limited demographic information without your authorization (such as email and mailing addresses, your child's age and gender, and the department in which your child received services). We may also share this limited demographic information with charitable foundations that raise money on our behalf to help us operate. Gersh requires your explicit written authorization to use or disclose any protected health information for fundraising or marketing purposes that is not considered permissible demographic information. If you do provide us with your written authorization you have a right to revoke such authorizations at any time. All fundraising and marketing communications (via traditional mail or email) will have an easy "opt out" mechanism for you to utilize at your discretion. To opt out of fundraising and marketing communications, call (631) 385-3342 ext. 382 and follow the directions provided.

- National Security and Intelligence Activities; Protective Services. To authorized federal officials who are conducting national security and intelligence activities or providing protective services to the President of the United States or other important officials.

Any other uses and disclosures not described in this Notice of Privacy Practices will be made only with your specific authorization.

### **APPLICATION OF FERPA TO CERTAIN PHI MAINTAINED BY GERSH PROGRAMS**

The federal Family Educational Rights and Privacy Act (“FERPA”) protects the privacy of certain students’ education records. The term “education records” is broadly defined to mean those records that are: (1) directly related to a student, and (2) maintained by or on behalf of an educational agency or institution. At the elementary or secondary level, a student’s health records, including immunization records, maintained by an educational agency or institution subject to FERPA, as well as records maintained by a school nurse, are “education records” under FERPA and not PHI subject to HIPAA. In addition, records that elementary or secondary level schools maintain on special education students, including records on services provided to students under the Individuals with Disabilities Education Act (IDEA), are “education records” under FERPA.

An educational agency or institution subject to FERPA may not have a policy or practice of disclosing the education records of students, or personally identifiable information from education records, without a parent’s or eligible student’s written consent. However, FERPA contains several exceptions to this general consent rule. An “eligible student” is a student who is at least 18 years of age. Under FERPA, parents/guardians and eligible students have the right to inspect and review the student’s education records and to seek to have those records amended in certain circumstances.

When a school provides health care to students in the normal course of business, such as through its health clinic, it is also a “health care provider” as defined by HIPAA. If a school also conducts any covered transactions electronically in connection with that health care, it is then a covered entity under HIPAA. However, many schools, even those that are HIPAA-covered entities, are not required to comply with the HIPAA Privacy and Security Rules to the extent that health records maintained by the school are “education records” of eligible students under FERPA, which are excluded from the definition of PHI under HIPAA.

Generally, your PHI will be subject to HIPAA. However, if your education at GERSH is funded in- whole or in-part by any program administered by the U.S. Department of Education, then the privacy of some or all of your information is governed by FERPA, rather than HIPAA. In such cases, the privacy protections under FERPA will be applied to your records which qualify as education records under FERPA, and your education records will not be released without your parent or guardian’s specific written authorization if you are under age eighteen or your guardian’s specific written authorization if you are age eighteen or older, unless otherwise permitted or required by law. In addition, the HIPAA privacy protections described in this Notice will be applied to your other clinical information treated as PHI under HIPAA. If you have questions regarding the application of FERPA to your records, please contact the GERSH Privacy Officer.

## **RIGHTS YOU HAVE TO ACCESS AND CONTROL YOUR PHI**

*You have the following rights to access and control your Protected Health Information. These rights help you control the way we use your PHI and share it with others, and the way we communicate with you about your health care matters.*

### **1. Right To Inspect And Copy Records.**

You have the right to inspect and obtain copies of your PHI obtained by Gersh, including medical and billing records. For PHI that we maintain in an electronic designated record set, you may request a copy of such health information in a reasonable electronic format if readily producible. To inspect or obtain a copy of your PHI, please submit your request in writing to Compliance, 21 Sweet Hollow Road, Huntington, NY 11743. Such requests may be submitted by e-mail to Gersh [info@gershautism.com](mailto:info@gershautism.com). However, an e-mail request will not be considered as having been received by Gersh until and unless the Gersh Privacy Officer sends you an e-mail acknowledging the date and time at which Gersh received your e-mail request. If you request a copy of your PHI, we may charge a fee for the costs of copying, mailing or supplies we use to fulfill your request. The standard fee is \$0.75 per page and must generally be paid before or at the time we give you the copies.

We will respond to your request for inspection of your PHI within 10 days. We ordinarily will respond to requests for copies within 30 days. If we need additional time to respond to a request for copies, we will notify you in writing within the time frame above to explain the reason for the delay and to inform you when you can expect to have a final answer to your request.

Under certain limited circumstances, we may deny your request to inspect or obtain a copy of your PHI. If we do, we will provide you with a summary of the information instead. We will also provide a written notice that explains our reasons for providing only a summary, and a complete description of your rights to have that decision reviewed and steps you may take to exercise those rights. The written notice also will include information on how to file a complaint about these issues with us or with the Secretary of the Department of Health and Human Services. If we have reason to deny only part of your request, we will provide complete access to the remaining parts after excluding the information we cannot let you inspect or copy.

### **2. Right to Request Changes to Your Records.**

If you believe that the PHI we have about you is incorrect or incomplete, you may ask us to amend such information. You have the right to request an amendment for as long as such PHI is kept in our records. To request an amendment, please write to HIPAA CHPSE Officer, 21 Sweet Hollow Road, Huntington, NY 11743. Such requests may be submitted by e-mail to Gersh [info@gershautism.com](mailto:info@gershautism.com). However, an e-mail request will not be considered as having been received by Gersh until and unless the Gersh Privacy Officer sends you an e-mail acknowledging the date and time at which Gersh received your e-mail request. Your request should include the reasons why you think we should make the amendment. Ordinarily we will respond to your request within 30 days. We will comply with your request unless: (i) we believe that the information is accurate and complete; (ii) we maintain the information you have asked us to amend, but we did not create or author it (for example, such information was obtained from your medical records at another hospital or a medical practice and incorporated into your medical record here); or (iii) the information is not part of a designated record set or otherwise is unavailable for inspection.

If we deny all or part of your request, we will provide you with a written notice that explains our reasons for doing so. You will have the right to have certain information related to your requested amendment included in your records. For example, if you disagree with our decision, you will have an opportunity to submit a statement explaining your disagreement, which we will include in your records. We will also include information on how to file a complaint with us or with the Secretary of the Department of Health and Human Services. These procedures will be explained in more detail in any written denial notice we send to you.

### **3. Right to an Accounting of Disclosures.**

You may request an accounting of certain disclosures we have made of your PHI, other than for purposes of treatment, payment and health care operations, within the six (6) year period preceding the date of your request for the accounting. Pending adoption of applicable federal regulations, and pursuant to applicable New York State Law, you also may request an accounting of certain disclosures we have made of your ePHI for purposes of treatment, payment and health care operations from a designated record set within the three (3) year period preceding the date of your request for such accounting. The first accounting you request within a period of twelve (12) months is free. Any subsequent requested accountings may result in a reasonable charge for the accounting statement. Please contact the Gersh Privacy Officer if you wish to request an accounting of disclosures. We will generally respond to your request in writing within thirty (30) days from the date of receipt of your request. We will notify you of any cost involved so that you may choose to withdraw or modify your request before incurring such costs.

### **4. Right to Request Additional Privacy Protections.**

You have the right to request that restrictions be placed on uses and disclosures of your PHI for treatment, payment and health care operations, and with respect to disclosures to your family and friends. Requests for restrictions must be in writing, must specify what PHI you want to limit and what limitations you want to have imposed on our use or disclosure of such PHI, and should be sent to the Gersh Privacy Officer. Although we will endeavor to comply with reasonable requests that do not adversely affect your treatment, we are not required to grant your request unless such request relates solely to disclosure of your PHI to a health plan or other payor for the sole purpose of payment or health care operations for a health care item or service for which you or someone on your behalf (other than the plan) have paid us in full and out-of-pocket. You may cancel any such restrictions by writing to the Gersh Privacy Officer. Requests for restrictions, if approved and cancellations of restrictions will be effective with respect to future disclosures only.

### **5. Right to Request More Confidential Communications.**

You have the right to request in writing that we communicate with you about your medical matters in a more confidential manner, by alternative means, or at alternative locations. For example, you may request that we contact you by fax or email instead of by mail, or at work instead of at home. To request more confidential communications, please write to HIPAA CHPSE Officer, 21 Sweet Hollow Road, Huntington, NY 11743. Such requests may be submitted by e-mail to Gersh [info@gershautism.com](mailto:info@gershautism.com). However, an e-mail request will not be considered as having been received by Gersh until and unless the Gersh Privacy Officer sends you an e-mail acknowledging the date and time at which Gersh received your e-mail request. *We will not ask you the reason for your request, and we will try to accommodate all reasonable requests.* Please specify in your request how or where you wish to be contacted. If you request that any portion of such information be sent to you by e-mail, we will send you such information only via encrypted e-mail. Any portion of the info

you request that cannot be encrypted will be sent to you via regular mail or, if you so authorize, by fax transmission.

#### **6. Right to Breach Notification.**

We will notify you in the event a breach occurs involving or potentially involving your unsecured PHI and inform you of what steps you may need to take to protect yourself.

#### **7. Right to Revoke Authorization.**

At any time, you may revoke any or all of your specific authorizations, whether given verbally or in writing, without revoking your general written consent. Any such revocation must be in writing, and any revocation of specific authorizations, whether in connection with your revocation of your general written consent or otherwise, will be effective prospectively, *i.e.*, your revocation will not be effective with respect to actions which we took in reliance on your specific authorization prior to your revocation. No revocation will be effective unless submitted in writing to 21 Sweet Hollow Road, Huntington, NY 11743. Such requests may be submitted by e-mail to Gersh [info@gershautism.com](mailto:info@gershautism.com). However, an e-mail request will not be considered as having been received by Gersh until and unless the Gersh Privacy Officer sends you an e-mail acknowledging the date and time at which Gersh received your e-mail request. Any revocation will be granted except to the extent we may have taken action in reliance upon your prior authorization.

### **INFORMATION REGARDING THE LENGTH AND DURATION OF THIS NOTICE**

This Notice is effective as of May 1, 2019. We may change this notice at any time. Changes to this Notice will apply to all health information, including mental health information. However, if we do change this Notice, we will only make changes to the extent permitted by law. We will also make the revised Notice available to you by posting it each of our facilities in a place where all individuals seeking services from us will be able to read the Notice, as well as on our website.

Such requests may be submitted by e-mail to Gersh [info@gershautism.com](mailto:info@gershautism.com). However, an e-mail request will not be considered as having been received by Gersh until and unless the Gersh Privacy Officer sends you an e-mail acknowledging the date and time at which Gersh received your e-mail request. <http://www.gershautism.com>. You may at any time request a paper copy of this Notice, even if you previously agreed to receive this Notice by email or other electronic format.

### **COMPLAINTS/ADDITIONAL INFORMATION**

You may contact our Privacy Officer at any time if you wish to obtain any additional information or have questions concerning this Notice or your protected health information, including mental health information. If you feel that your privacy rights have or may have been violated, you may also contact our Privacy Officer **OR** file a written complaint with the Office of Civil Rights of the U.S. Department of Health and Human Services. **We will NOT retaliate against you if you file a complaint with us or the Office of Civil Rights.** If you wish to file a written complaint with the Office of Civil Rights, please contact the Gersh Privacy Officer, and we will provide you with the appropriate contact information.