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# PRIVACY PLAN

## A. Basic Policy

Since VIP serves the health needs of its clients, all of VIP's staff members share a common set of obligations under the law, the Health Insurance Portability and Accountability Act of 1996, commonly referred to as "HIPAA," and the Confidentiality of Substance Use Disorder Patient Records regulations, 42 CFR Part 2, to preserve the integrity and the confidentiality of medical and other sensitive information pertaining to VIP's clients.

The purpose of this policy is to balance two competing objectives: (1) ensuring that VIP's officers, employees, and agents (referred to as "staff members") have access to and the use of the necessary clinical and other information to provide the highest quality service possible; while (2) protecting the confidentiality of that health information to the highest degree possible and in conformance with all applicable state and federal requirements, so that VIP's clients feel comfortable revealing their health information to VIP's staff members and not withhold information out of fear that it will not be protected.

Accordingly, VIP, as well as its staff members will do the following to protect its clients' protected health information:

1. Access, use and disclose individual clinical information solely for the purposes of supporting the delivery, payment, integrity, and quality of VIP's treatment and client services or for specific purposes required by law.
2. NOT use or supply individual clinical information for non-health care uses, such as direct marketing, employment, or credit evaluation purposes.
3. Recognize that medical information collected about clients must be accurate, timely, complete, and available when needed. Accordingly, VIP and its staff members will:
  - a. Use their best efforts to ensure the accuracy, timeliness, and completeness of data and to ensure that authorized staff members can access it when needed.
  - b. Complete and authenticate medical records in accordance with the law, medical ethics, and accreditation standards.
  - c. Maintain medical records for the retention periods required by law and

professional standards.

d. Not alter or destroy an entry in a record, but rather designate it as an error while leaving the original entry intact and creating a new entry showing the correct data.

e. Implement reasonable measures to protect the integrity of all data maintained about clients.

f. Recognize that clients have a right of privacy. VIP and its staff members will respect clients' privacy to the extent consistent with providing the quality medical care and with the efficient administration of the facility.

5. Accept the responsibility of acting as information stewards and treat all individual medical record data and related financial, demographic information, and lifestyle information as sensitive and confidential. VIP and its staff members will take care to:

- a. Treat all individual medical record data as confidential in accordance with professional ethics, accreditation standards, and legal requirements.
- b. Not divulge medical record data unless the client (or his or her authorized representative) has properly authorized the release or the release is otherwise authorized by law, such as communicable disease reporting or child abuse reporting.
- c. When releasing medical record data, take appropriate steps to prevent unauthorized re-disclosures, such as specifying that the recipient may not further disclose the information without client consent or as authorized by law.
- d. Implement reasonable measures to protect the confidentiality of medical and other information maintained about clients.
- e. Remove client identifiers when appropriate, such as in statistical reporting and in medical research studies.
- f. Not disclose financial or other client information except as necessary for billing or other authorized purposes as authorized by law and professional standards.

6. Recognize that some medical information is particularly sensitive, such as HIV/AIDS information, mental health and developmental disability information, alcohol and drug abuse information, and other information about sexually transmitted or communicable diseases, and that disclosure of such information could severely harm clients, such as by causing loss of employment opportunities and insurance coverage and inflict social



stigma. Consequently, VIP and its staff members will treat such information with additional confidentiality protections as required by law, professional ethics, and accreditation requirements.

7. Recognize that, although VIP owns the medical record, the client has a right of access to information contained in the record. VIP and its staff members will:

- a. Permit clients access to their medical records except when access would be detrimental to the client under the so-called “therapeutic exception” to client access. In such cases, VIP and its staff members will provide an authorized representative access to the client’s records in accordance with law, professional ethics, and accreditation requirements.
- b. Provide clients an opportunity to request correction of inaccurate data in their records in accordance with the law and professional standards.

8. Enforce this policy by supervising the conduct of its staff members. VIP will not tolerate violations of this policy. Violation of this policy is grounds for disciplinary action, up to and including termination of employment and criminal or professional sanctions in accordance with VIP’s medical information sanction policy and staff member rules and regulations.

## **B. The Core Concept: Protected Health Information**

Protected Health Information is individually identifiable health information that is transmitted or maintained in any form or medium (electronic, oral, or paper) by VIP or its business associates. Protected health information means any information about a person, which relates to the person’s past, present, future:

1. Physical or mental health or condition.
2. Treatment of the condition; or
3. Payment for treatment.

Protected health information may be information learned by talking with a VIP client, documents presented by the VIP client or by another treatment facility or information learned by the VIP staff while treating the client. Protected health information ranges from a client’s status as a VIP patient to a client’s treatment regimen (example, methadone treatment) to a client’s medical condition or status (example, whether the client has HIV or AIDS or neither).

It must be assumed by all VIP staff that any information obtained from or learned about a client from any source is protected health information. Disclosure of protected health information not in compliance with this policy will result in sanctions, which may include suspension or termination.



**ALL MEDICAL RECORDS AND PROTECTED HEALTH INFORMATION IN A CLIENT'S RECORD ARE CONFIDENTIAL AND CANNOT BE DISCLOSED TO ANY PERSON WHO IS NOT AUTHORIZED TO KNOW THE INFORMATION ABOUT A CLIENT.**

**C. Minimum Necessary Standard**

1. VIP and its offices, facilities, programs, and workforce members will make reasonable efforts to ensure that only the limited data set, or if necessary, the minimum necessary protected health information is disclosed, used, or requested.

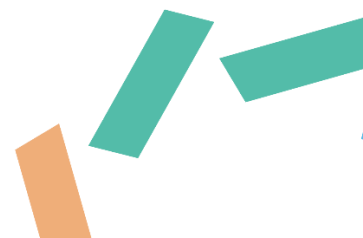
2. Exceptions to the minimum necessary requirement include:

- a. Disclosures to the individual who is the subject of the information.
- b. Disclosures made pursuant to an authorization.
- c. Disclosures to or requests by healthcare providers for treatment purposes.
- d. Disclosures required for compliance with the standardized HIPAA transactions.
- e. Disclosures made to the Department of Health and Human Services pursuant to a privacy investigation.
- f. Disclosures otherwise required by the HIPAA regulations or other law.

3. The following procedures will be implemented to ensure that this policy is enforced effectively across all parts of the organization.

- a. Each user of protected health information will be identified and the category or categories of protected health information to which access is needed and any conditions appropriate to such access will be established. This will be the responsibility of VIP's Privacy Officer.
- b. Reasonable efforts will be made to limit each protected health information user's access to only the protected health information that is needed to conduct his/her duties. These efforts will include internal staff to staff use and disclosure of protected health information.
- c. For all disclosures, VIP's Privacy Officer or his designee will review and disclose only the information that is reasonably necessary to accomplish the purpose for which the disclosure is sought.
- d. Use/disclosure of the entire medical record should not be made unless use/disclosure of the entire record is specifically justified as the amount reasonably necessary to accomplish the purpose of the use or disclosure.
- e. VIP will conduct random audits of access to client files to verify that unauthorized persons are not improperly accessing client information.

**D. Controlling Disclosure of Protected Health Information**



1. VIP is a federally funded alcohol and drug abuse program and therefore most of its medical records are not only protected by HIPAA, but also the federal regulations as promulgated in 42 C.F.R. Part 2 for drug and alcohol treatment records. Unless otherwise permitted by law, VIP's general policy is to not to release protected health information to any person, organization, or government entity without either:

- a. A court-ordered subpoena or court order; or
- b. A HIPAA and 42 C.F.R. Part 2 compliant authorization.

2. Any disclosure to any person, organization, or government entity for purposes other than treatment, payment, or health care operations, must be made through VIP's Privacy Officer. Any VIP staff member who discloses protected health information without VIP's Privacy Officer consent will be sanctioned; such sanctions may include suspension and/or termination from employment.

Prior to disclosure, VIP will verify the identity and the authority of the person making the request for disclosure of protected health information. VIP will collect and document each disclosure as required by HIPAA. For more information about documentation of disclosure, see VIP's policy entitled "Documenting Disclosures and Medical Records Security."

### **Request for Disclosure of Protected Health Information Received by VIP Staff**

If a VIP staff member receives by telephone a request for information about a VIP client, the VIP staff member is forbidden to release any information to that person. It is the responsibility of that staff member to inform VIP's Privacy Officer of the request promptly and without delay. The staff member should obtain for VIP's Privacy Officer, if possible:

- a. The name of the VIP client about whom information is sought;
- b. The requesting person's name and telephone number;
- c. What organization the requesting person is calling from; and
- d. If there is a deadline by which VIP must respond to the request.

Once the VIP staff member has the requesting person's answers to the above questions, the VIP staff member is instructed NOT to discuss anything else with requesting person. Instead, the VIP staff member should inform him/her that VIP's Privacy Officer or someone from the Compliance Department will return the telephone call. The VIP staff member must then give to VIP's Privacy Officer the information about the request as soon as possible. The VIP staff member is directed to forward to VIP's Privacy Officer's office the request within one (1) business day. If a VIP staff member is found to have held onto and not turned over to VIP's Privacy Officer's office such a



request for disclosure beyond three (3) business days, VIP will sanction the staff member as permitted under VIP's sanction policy.

If a VIP staff member receives by fax or by mail a request for the disclosure of any information about a VIP client, the VIP staff member is directed to forward to VIP's Privacy Officer's office the request within one (1) business day. The acceptable forms of request include:

- a. Forms to be completed by a counselor or other VIP staff member.
- b. An authorization; or
- c. Court-ordered subpoena (called a "Judicial Subpoena" or "Subpoena Duces Tecum" that was "So Ordered").

VIP's Privacy Officer must receive the request as soon as possible because he/she must respond to the request in a timely manner. If a VIP staff member is found to have held onto and not turned over to the Privacy Officer's office a request for disclosure beyond three (3) business days, VIP will sanction the staff member as permitted under VIP's sanction policy.

### **Disclosure from VIP Staff Member to VIP Staff Member**

**VIP staff members may only discuss a client's protected health information with other VIP staff members who have a job-related need to know about the specific information.** It is an important aspect of VIP's privacy policy that its staff members abide by this specific rule. It is inappropriate for VIP staff members to discuss with other staff members the condition or treatment of a client unless the communication is for the purpose of treatment. A staff member may consult another staff member for assistance with treatment options or for a second opinion, but not to disclose the information for gossip purposes (i.e., to any other person including private conversations over lunch or on a coffee break).

Staff members are required to do everything that they can to limit the disclosure of protected health information to unauthorized people, including other staff members. Staff members must refrain from casually discussing client health matters, since it is forbidden to disclose a client's protected health information to even other VIP staff members if they do not have a business "need to know." In addition, staff should take steps to prevent other people from overhearing conversations about client matters.

Failure to comply with this policy will result in sanctions imposed upon the staff members involved, which can include suspension and/or termination.

### **G. Access to Clinical Records by Qualified Persons**

"Qualified Person" means any properly identified client or guardian of a person with a developmental disability appointed pursuant to article 17-A of the Surrogate's Court Procedure Act (the "Act"), or an appointed committee for an incompetent, or a guardian



of an infant appointed pursuant to the Act or other legally appointed guardian of an infant who may be entitled to request access to a clinical record, or a parent, spouse or adult child of an adult client or client who may be legally entitled to request access.

If a Qualified Person wants to view a client's medical record, VIP staff members are directed to tell the Qualified Person that the staff member is not authorized to show the health records. The Qualified Person should make a written request VIP's Privacy Officer, including the Qualified Person's name address and telephone number. The Privacy Officer will contact the Qualified Person about reviewing the records. Generally, unless certain exceptions apply, VIP must provide an opportunity, within ten (10) business days, for the Qualified Person to inspect any clinical record concerning or relating to the examination or treatment of such individual.

If a Qualified Person makes the written request to any staff member other than VIP's Privacy Officer, the VIP staff member is required, within one (1) business day to deliver the written request to VIP's Privacy Officer. Failure to deliver the request within one (1) business day, will result in sanctions, including suspension or termination. Certain limitations on access may apply; for example, the treating practitioner may request to review the information requested by the Qualified Person and determine that the requested review could reasonably be expected to cause substantial and identifiable harm or a detrimental effect to the Client. In such a situation, an acceptable alternative may be to grant access to a prepared summary of the record. In determining whether the harm or detrimental effect outweighs the right of access, the practitioner or treating practitioner may consider, among other things, the following:

1. The need for, and the fact of, continuing care and treatment.
2. The extent to which the knowledge of the information contained in the clinical record may be harmful to the health or safety of the client or others.
3. The extent to which the clinical record contains sensitive information disclosed in confidence to the practitioner or treating practitioner by family members, friends, and other persons.
4. The extent to which the clinical record contains sensitive information disclosed to the practitioner or treating practitioner by the client or client which would be injurious to the client's or client's relationships with other persons except where the client is requesting information concerning himself or herself; and
5. In the case of a minor making the request for access, the age of the Client or client.





If access is denied, the Privacy Officer will notify the Qualified Person of the denial, and of the qualified person's right to obtain, without cost, a review of the denial by VIP's General Counsel.

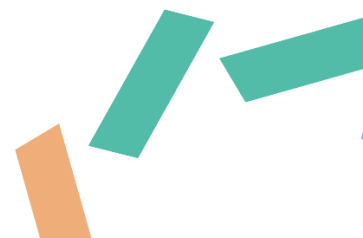
If the Qualified Person requests a review, then VIP will, within ten (10) days of the receipt of such request, transmit the record with a statement setting forth the specific reasons that access was denied.

After an in-camera review of the materials and providing all parties a reasonable opportunity to be heard, VIP's General Counsel will make a prompt determination as to whether access will be granted.

Finally, a Qualified Person may challenge the accuracy of information maintained in the clinical record and may require that a brief written statement prepared by him/her concerning the challenged information be inserted into the clinical record. This statement will become a permanent part of the record and will be released whenever the clinical record at issue is released. However, such challenge applies only to factual statements and will not include a provider's observations, inferences, or conclusions. VIP has the right to place reasonable restrictions on the time and frequency of any challenges to accuracy.

#### **H. Minor Access to Medical Records:**

1. As a general rule, the HIPAA Privacy Rule states that under applicable law, a parent or guardian is the authorized representative for their minor children and can access their PHI.
2. However, there are several exceptions to this general rule. Parents may not be treated as their children's authorized representative and can't access their minor children's PHI for reasons including:
  - a. When a physician or VIP reasonably believes the minor may be subject to domestic violence, abuse, or neglect by the authorized representative or the authorized representative could endanger the minor, or in the case of mental health records, such disclosure could affect the authorized representative's relationship with the minor or have a detrimental effect on the minor's care (*see the Mental Hygiene Law Considerations section in the VIP Information Blocking Policy*).
  - b. Reproductive health care
  - c. Treatment and testing for sexually transmitted infections
  - d. Drug and alcohol abuse care
  - e. Emergency medical care
  - f. Prenatal care
  - g. Mental health counseling and services
  - h. HIV/AIDS services and care





- i. The child (over 12 years of age) objects to the disclosure

## **I. Disclosure of Protected Health Information Under Special Circumstances**

1. If VIP receives a request for disclosure of protected health information about a deceased VIP client, VIP will require information set forth below before releasing any information to anyone.

- a. An original or copy of VIP's client's death certificate.
- b. A written authorization for the disclosure signed by an authorized individual. An executor, administrator, or other personal representative appointed under applicable state law may give that authorization. If there is no fiduciary appointed to act in a legally authorized manner on behalf of the deceased person's estate, then the authorization may be given by the client's spouse or, if none, by any responsible member of the client's family.
- c. VIP may request documentation regarding the authorized individual's status (i.e., death certificate and marriage license if person is client's spouse).
- d. If VIP does not receive such evidence of an authorization or potential authorization, VIP will not release protected health information about deceased client.

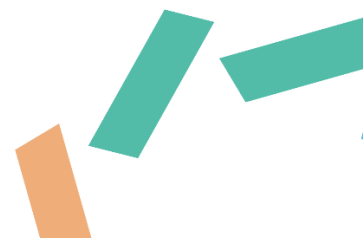
2. Reports of suspected child abuse or neglect may be made to a public health authority, the New York State Central Registry or other appropriate government authority authorized by law to receive reports of child abuse or neglect.

3. Except for reports of child abuse or neglect which are discussed in Section H 2, VIP may disclose health information about a client whom VIP reasonably believes to be a victim of abuse, neglect, or domestic violence if the disclosure is to a government authority authorized by law to receive such reports (e.g., social services or adult protective agencies), provided that the disclosure is either:

- a. Required by law and complies with and is limited to the relevant requirements of such law;
- b. Agreed to by the client; or
- c. Authorized by statute or regulations, and:

I. VIP reasonably believes that the disclosure is necessary to prevent serious harm to the client or other potential victims; or

II. The client is unable to agree due to incapacity, and a government authority authorized by law to receive the report represents that (x) the client information sought is not intended to be used against the client, and (y) an immediate enforcement activity would be materially and adversely affected by waiting until the client is able to agree to the disclosure.



#### 4. Disclosures to Public Health Authorities:

- a. Although VIP believes strongly in its clients' right to privacy and protection of health information, VIP is required, for its own health care operations and specifically for funding purposes, to release reports on its clients to public health authorities and programs. VIP on a regular basis report and discloses statistical information about its clients to the New York City Social Services Department. These reports are made to track and maintain statistics regarding drug and alcohol clinics in New York City. HIPAA permits such disclosures. VIP releases this information in compliance with New York Mental Hygiene Law § 33.13, and after obtaining a HIPAA and 42 C.F.R. Part 2 compliant authorization from the client.
- b. VIP discloses information regarding communicable diseases as required by New York State law. VIP will release information regarding communicable diseases such as syphilis and hepatitis to public health authorities in conformance with the law.,
- c. VIP will not report a client's HIV/AIDS status to anyone without written authorization from the client unless permitted by law. The authorization must meet both New York State law requirements and those imposed by HIPAA. HIV/AIDS status not only relates to positive test results. It also relates to a negative test result or even the fact that such test was taken, and further, even relates to the description of a person's lifestyle or drug use.

5. VIP will disclose protected health information to law enforcement in certain specific circumstances and only after the law enforcement agency has obtained the necessary documentation (e.g., a court order) and/or such disclosure is permissible under HIPAA and 42 C.F.R. 2.

6. If VIP is served with a court order that complies with the requirements of 42 C.F.R. 2, from a court of competent jurisdiction, then VIP will respond by providing the court with the protected health information ordered to be released. In so doing, VIP must act (through attorneys) to emphasize the non-re-disclosure directives established by 42 C.F.R. Part 2 regulations. It is VIP's policy to obey court orders and to comply with the orders as quickly as possible.

7. Subject to certain limited exceptions, VIP will only release information pursuant to a subpoena if the subpoena is accompanied by a court order that complies with 42 C.F.R. Part 2 or a client authorization.

8. VIP will disclose protected health information to comply with workers compensation and other similarly legally established programs.

9. VIP has entered into Contracts with its vendors and consultants (collectively called "Business Associates") who may, while working with or for VIP, receive, maintain, or transmit disclosures of protected health information concerning VIP's clients. These



contracts referred to as Business Associate Agreements or in certain circumstances Qualified Service Organization Agreements address the privacy confidentiality and security of Protected Health Information. The task of controlling re-disclosure, however, is VIP's responsibility to the client, which VIP must monitor in its relationship with business associates.

VIP's contracts with its business associates protect VIP's clients' protected health information from unauthorized disclosure by such associates. VIP will take all steps possible to limit disclosures to such associates to the minimum necessary, in accordance with the Minimum Necessary Rule, referenced in Section C of this Manual.

#### 10. Other Special Circumstances: Marketing & Fundraising:

- a. Marketing: VIP may use a client's photo or statement in marketing materials only with written consent.
- b. Fundraising: VIP may use a client's photo or statement in fundraising activities only with written consent.

### **Disclosure of Protected Health Information for Treatment, Payment, and Health Care Operations**

1. VIP's primary concern is the well-being and treatment of its clients. In furtherance of that goal, it is VIP's policy to permit protected health information about clients to be communicated amongst VIP's staff members who have a need to know the information. If a staff member is treating a client and the staff member does not have all relevant client information, the VIP staff member will have difficulty doing his/her best for the client. Use and disclosure of protected health information is allowed for treatment purposes. Therefore, VIP staff members are encouraged to consult and record information in the client's medical records so that other staff members who treat the same client can be fully informed about the client's treatment and condition.

It is important that a client's protected health information be used appropriately and not for any uses other than VIP's treatment, payment, or health care operations. Disclosure of protected health information to any person who is either: (a) not a VIP staff member; or (b) a VIP staff member who does not have a need to know for treatment or billing purposes is a violation of VIP policy, is prohibited and will result in sanctions to the staff member(s) involved in the disclosure.

2. VIP provides services to a community of people who, for the most part, cannot afford VIP's services. Therefore, VIP is mostly funded by government agencies that provide assistance to those who cannot afford its services. VIP discloses the minimum necessary amount of protected health information to accomplish payment from the government agencies. Some agencies require more information than others about services provided by VIP to its clients. It is left to the discretion of the billing department and the finance department to determine what protected health information is required



by the funding agencies on a case-by-case basis. A review of the submission will occur on a biannual basis by VIP's Privacy Officer for oversight and control of protected health information.

3. VIP may use or disclose, as needed, protected health information to support VIP's business activities. These activities include, but are not limited to, quality assessment activities, staff member review activities, training of counselors, licensing, and conducting its business of treating and servicing its clients' needs.

For example, VIP may use a sign-in sheet at the registration desk where each of VIP's clients will be asked to sign his/her name and indicate the VIP staff member the client has come to see; however no medical information that is not necessary to signing-in will be requested.

VIP will only disclose or use the minimum necessary protected health information in furtherance of VIP's operations.

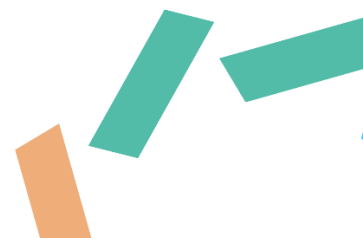
## **K. Documenting Disclosures and Medical Records Security**

1. It is VIP's Privacy Officer's responsibility to maintain and record each disclosure of protected health information for individual clients. The Officer will maintain a database describing and listing all disclosures made by VIP. The database includes:

- a. the name of the VIP client whose protected health information was disclosed
- b. to whom the disclosure was made
- c. the purpose of the disclosure
- d. whether the disclosure was made pursuant to a court order, authorization or for another HIPAA and 42 C.F.R. Part 2 permitted purpose.
- e. the date of the disclosure and
- f. the protected health information disclosed.

### 2. Medical Record Security

- a. VIP's facilities have their own storage locations for clients' medical records, which creates a need for greater oversight, not only by VIP's Privacy Officer, but also by the directors of each of VIP's facilities. It is VIP's policy that before a medical record is taken off the shelf where it is stored, the person requesting the record must sign a sheet which lists the person's name, position with VIP, how long the record will be off the storage shelf and the purpose of the request to review the medical record.
- b. It is the responsibility of the medical records person for the individual VIP facility where the request is made to ensure that the person seeking the record: (1) is authorized to review the record, i.e., is one of the VIP staff members who have a need to know the client's information; and (2) has completed the sign-out sheet.



c. Before the end of each business day, the medical records person at each VIP facility is required to review the sign-out sheet and make sure all medical records are returned that were due to be returned based upon each VIP staff member's representation on the sign-out sheet.

d. VIP's Privacy Officer or their designee will conduct random checks of VIP's facilities to make sure that:

- I. All medical records are stored in a secure location;
- II. The sign out sheet is completed; and
- III. The medical records, which are to be returned, have been returned.

e. If VIP's Privacy Officer or their designee finds the facility in violation of this policy, sanctions will be imposed, not only on the VIP staff member who has without authorization reviewed records or held onto records longer than permitted, but also upon the medical records person and the director of the facility. Sanctions may include suspension or termination.

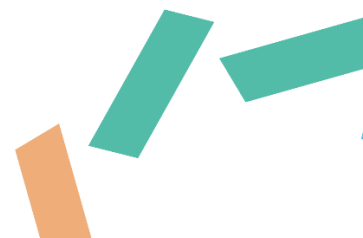
f. Each VIP staff member who signs-out a client's medical record is entrusted with its care, protection, and security. It is the VIP staff member's responsibility not to permit any unauthorized individual from viewing or handling the medical record. Each staff member handling a client medical file or record must protect it from unauthorized viewing as if it were his/her own private medical record to be protected from disclosure.

g. When the medical record is signed-out by a VIP staff member that staff member must take extra precautions to guard the safety of those records in his/her custody, including but not limited to:

- (i) Locking the office door where the medical record is stored.
- (ii) Locking the file cabinet where the medical record is stored.
- (iii) Returning the medical record once the VIP's staff member's review or updating of the record is complete; and
- (iv) Not entrusting any other VIP staff member with returning or holding onto the medical record.

## **L. Disclosures by Whistleblowers**

1. If a VIP staff member believes, in good faith, that VIP has violated any provision of law, provision of the HIPAA regulations, provision of 42 CFR Part 2 regulations or acted in a manner which the staff member believes is a violation of state or federal law or regulation or that the care, services or conditions provided by VIP potentially endangers



VIP's clients, the VIP staff member is encouraged to come forward with his/her complaint. The staff member is encouraged to disclose the information to VIP's Privacy Officer, or CEO, regarding the staff member's good faith belief; and/or

2. If any staff member files a complaint, testifies, assists, or participates in an investigation, compliance review, proceeding or hearing, such staff member will be protected against retaliation. Further, if a VIP staff member is encouraged to violate the provisions of HIPAA and refuses to do so, such staff member will be protected against retaliation.

3. VIP will sanction any VIP staff member who learns of the staff member's disclosure or refusal to violate HIPAA and intimidates, threatens, coerces, discriminates against, or takes other retaliatory action against the staff member in accordance with VIP's discipline policy.

#### M. Confidentiality Agreement:

1. All VIP employees will sign a confidentiality agreement during their new hire orientation.

2. The agreement will be placed in the employee's HR personnel file.

