Memorandum

TO: **Cabinet Secretaries**

FROM: **James L. Pitrolo, Jr., Chairman, HCA**

DATE: **March 19, 2012**

RE: **2012 Execution of Confidentiality Agreements**

CC: **Privacy Management Team**

Enclosed please find a new procedure, *Execution of Confidentiality Agreements,* effective April 1, 2012, and the associated West Virginia Executive Branch Confidentiality Agreement. This agreement shall be signed by all members of your workforce. We anticipate deploying this agreement utilizing the Office of Technology's Learning Management System, such that the agreement is executed electronically and "follows" employees as they transfer within the Executive Branch. We will facilitate your Privacy Officer's leadership and participation in this new initiative. Additionally please find enclosed the revised policy, *Accountability,* also effective April 1, 2012. Relevant updates to the Privacy Policy Definitions, as well as the policy and procedure, can be found on our Privacy website at www.privacy.wv.gov

This policy and procedure apply to all Departments (including the Governor's Office, Agencies, Boards and Commissions) within the Executive Branch of the West Virginia State Government, excluding other constitutional officers, the West Virginia Board of Education, County Boards of Education, and the Public Service Commission.

As always, the West Virginia Health Care Authority is appreciative of your support of the privacy program and the Department Privacy Officers for their efforts to ensure that staff are trained to safeguard private information such as social security numbers, driver's license numbers and health information.

If you have any questions, please do not hesitate to contact Sallie Milam, Chief Privacy Officer at 558-7000.

West Virginia Executive Branch

Procedure: **Execution of Confidentiality Agreements**

Issued by: James L. Pitrolo, Jr., Chairman
West Virginia Health Care Authority

1.0 PROCEDURE

The West Virginia Executive Branch maintains Confidential Information, including but not limited to Protected Health Information (PHI), financial information, social security numbers, passwords and other Personally Identifiable Information (PII). Federal laws, including, but not limited to, the Health Insurance Portability and Accountability Act and the Privacy Act of 1974 (HIPAA), and State law require that certain Confidential and Private information be safeguarded. West Virginia State Government must ensure its Compliance with those laws and desires to protect individuals' privacy.

All members of the Workforce shall sign the West Virginia Executive Branch Confidentiality Agreement, as amended, and addenda, if any, (collectively the "Confidentiality Agreement").

Any terms not defined herein shall have the definitions afforded them within the Privacy Policy Definitions currently located at www.privacy.wv.gov.

2.0 SCOPE

This procedure applies to all Departments within the West Virginia Executive Branch.

3.0 REQUIREMENTS

3.1 Each Department shall ensure that, upon hire, each member of its Workforce receives this Execution of Confidentiality Agreements Procedure (this "Procedure") and signs the Confidentiality Agreement. Where a Department determines that annual execution may be required to reduce risk, the Department may require the same after hire. Notwithstanding the foregoing, and in accordance with section 3.11 of this Procedure, a Confidentiality Agreement executed by a member of the Workforce shall remain in effect until a new Confidentiality Agreement is executed by that member.

3.2 Each Department shall ensure that any contract signed with a Vendor includes the Notice of State of West Virginia; Confidentiality Policies and Information Security Accountability Requirements, currently located at: www.technology.wv.gov. Each Department retains the discretion to require any Vendor's employees to execute the Confidentiality Agreement.

3.3 Each Department shall provide Access to all applicable Confidentiality procedures and policies to each member of its Workforce.

3.4 Each member of the Workforce shall follow all applicable law, rule, policy and procedure (collectively referred to herein as "Policy"). This Procedure shall not be construed to curtail a Workforce member's rights under federal or West Virginia law.

3.5 Confidential Information shall only be collected, used, disclosed or retained in the official capacity of employment and in Compliance with applicable Policy. At no time shall Confidential Information be used or disclosed for a personal or non-work-related reason.

3.6 All members of the Workforce shall protect Confidential Information from unauthorized collection, Use, Access, transfer, sale, Disclosure, alteration, retention or destruction whether accidental or intentional and shall take necessary precautions to secure such Confidential Information to the extent possible.

3.7 No member of the Workforce shall have ownership rights to or interest in any Confidential Information owned by or in the custody or control of the State.

3.8 Each Department, or another entity on its behalf, shall have the right to monitor and audit the collection, Use, Disclosure and retention of its Confidential Information to ensure Compliance with this Procedure.

3.9 All members of the Workforce who become aware of a violation of Policy must document and report any violations to their supervisor and

their Department Privacy Officer immediately upon acquiring knowledge of said violation. Incidents shall also be reported pursuant to the Response to Unauthorized Disclosures procedure, currently located at www.privacy.wv.gov.

3.10 Any unauthorized collection, Use, Disclosure, destruction or retention of Confidential Information, failure to secure said information, failure to follow Policy or failure to execute the applicable Confidentiality Agreement may result in disciplinary action up to and including dismissal or termination of the contractual relationship

3.11 The Confidentiality Agreement shall survive termination of employment or other Workforce arrangement, including transfer across Departments or termination of the contractual relationship.

4.0 REFERENCE

Section 7 of the *Privacy Act of 1974*; Public Law 93-579; 5 U.S.C. § 552a (note); *Health Insurance Portability and Accountability Act of 1996;* Public Law 104-191; codified at 42 U.S.C. § 1320d (note); *Health Information Technology for Economic and Clinical Health Act of 2009*, Public Law 111-5, ARRA Division A, Title XIII, § 13001; W. Va. Code §§ 5A-8-21 and 22; Executive Order No. 6-06 (Aug. 16, 2006);. See WV Executive Branch Privacy Requirements located at www.privacy.wv.gov for additional references.