§ 4409. Health maintenance organizations; examinations. 1. In order to carry out the provisions of this article, the commissioner, pursuant to his authority under section two hundred six of this chapter, shall examine not less than once every three years, each health maintenance organization and all participating entities through which such health maintenance organization offers health services as to the quality of health care services offered, and the adequacy of its provider arrangements.

2. (a) The superintendent shall examine not less than once every three years into the financial affairs of each health maintenance organization, and transmit his findings to the commissioner. In connection with any such examination, the superintendent shall have convenient access at all reasonable hours to all books, records, files and other documents relating to the affairs of such organization, which are relevant to the examination. The superintendent may exercise the powers set forth in sections three hundred six and three hundred ten of the insurance law in connection with such examinations, and may also require special reports from such health maintenance organizations as specified in section three hundred eight of the insurance law. As part of an examination, the superintendent shall review determinations of coverage for substance use disorder treatment and shall ensure that such determinations are issued in compliance with section four thousand three hundred three of the insurance law and title one of article forty-nine of this chapter.

(b) The department is authorized to address to any health maintenance organization, and managed long term care plan with a certificate of authority pursuant to section forty-four hundred three-f of this article, or officers thereof, any inquiry in relation to its contracts with providers and other entities providing covered services to the health maintenance organization's or managed long term care plan's enrollees, including but not limited to the rates of payment and payment terms and conditions therein. Every entity or person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be, if required by the department, signed by such individual, or by such officer or officers of a corporation, as the department shall designate, and affirmed by them as true under penalty of perjury.

Failure to comply with the requirements of this section shall be subject to civil penalties under section twelve of this chapter. Each day after the deadline established by the department for reply until such time that the provider submits a good faith response shall be considered a separate and subsequent violation. In accordance with the process outlined in this paragraph, employers shall provide any documents or materials in the employer's possession, custody, or control that are requested by the department as needed to support or verify the employer's reply.

(c) Any report, information, documents, or other materials furnished to the department under this subdivision shall be deemed a confidential communication and shall not be subject to inspection or disclosure in any manner, including article six of the public officers law or department regulations in conformance therewith, except as provided in this section, pursuant to a judicial subpoena issued in a pending action or proceeding, or upon formal written request by the department of labor, the office of attorney general, or a duly authorized public agency.

(d) The department shall no less than annually provide a report to the governor, temporary president of the senate, and speaker of the assembly summarizing the information obtained by the department under paragraph (b) of this subdivision. Such report shall not contain individually identifiable data.

3. The superintendent and the commissioner are authorized to share and exchange information obtained by them in the exercise of their respective responsibilities under the insurance law and this chapter.

4. Nothing contained in this section shall be deemed to require the public disclosure of privileged patient information.