**§ 4410. Health maintenance organizations; professional services.** 1. The provision of comprehensive health services directly or indirectly, by a health maintenance organization through its comprehensive health services plan shall not be considered the practice of the profession of medicine by such organization or plan. However, each member, employee or agent of such organization or plan shall be fully and personally liable and accountable for any negligent or wrongful act or misconduct committed by him or any person under his direct supervision and control while rendering professional services on behalf of such organization or plan.

2. Unless the patient waives the right of confidentiality, a health maintenance organization or its comprehensive health services plan shall not be allowed to disclose any information which was acquired by such organization or plan in the course of the rendering to a patient of professional services by a person authorized to practice medicine, registered professional nursing, licensed practical nursing, or dentistry, and which was necessary to acquire to enable such person to act in that capacity, except as may be otherwise required by law. A non-participating provider shall provide an enrollee's organization with such patient information as is reasonably required by the organization to administer its plan. In making such disclosure a provider shall comply with the provisions of subdivision six of section eighteen of this chapter concerning the disclosure of patient information to third parties provided, however, that with respect to a protected individual as defined in subdivision six of section twenty-seven hundred eighty of this chapter, disclosure shall be made only pursuant to an enrollee's written authorization and shall otherwise be consistent with the requirements of such section and rules and regulations promulgated pursuant thereto.

3. Notwithstanding the provisions of this section, the provisions of section four hundred twenty-two of the social services law shall apply to any information or reports submitted by a health maintenance organization to the statewide central register of child abuse and maltreatment reports.

4. (a) The commissioner shall have access to patient-specific medical information, including encounter data, maintained by a health maintenance organization or other organization certified pursuant to this article for the purposes of quality assurance and oversight, subject to any other limitations of federal and state law regarding disclosure thereof to third parties and subject to the provisions of this subdivision. The provisions of sections thirty-one hundred one, and forty-five hundred four, forty-five hundred seven and forty-five hundred eight of the civil practice law and rules, subdivision three of this section and section 33.13 of the mental hygiene law, shall not bar disclosure by the health maintenance organization to the commissioner for such purposes.

(b) The commissioner may only obtain enrollee information subject to the establishment of protocols that will ensure that such patient-specific information is not disclosed to third parties other than to entities serving as agents of the state for the purposes of quality assurance and oversight. Such protocols shall be developed in consultation with representatives of health maintenance organizations, health care provider organizations and consumer organizations and shall, where possible, include the development of a unique confidential identifier to be used in connection with patient-specific data. These protocols shall address issues relating to the collection, maintenance, and disclosure of such patient-specific information. Such protocols shall be promulgated as regulations, provided however, that protocols or regulations in use prior to the effective date of this subdivision shall remain in effect until the regulations developed hereunder are promulgated.

(c) In addition to any other sanction or penalty as provided by law, any employee of the department who willfully violates this regulation or any other rule or procedure pertaining to the disclosure of any material collected pursuant to this subdivision shall be deemed to have committed an act of misconduct and shall be disciplined in accordance with the provisions of the civil service law.