

New York State Confidentiality Law and HIV: Public Health Law, Article 27-F



What Is Public Health Law, Article 27-F?

Article 27-F is the section of New York State Public Health Law that protects the confidentiality and privacy of anyone who has:

- Been tested for HIV;
- Been exposed to HIV;
- A diagnosis of living with HIV or HIV/AIDS-related illness; or
- Been treated for HIV/AIDS-related illness.

Public Health Law, Article 27-F:

- Requires that every individual age thirteen and older be offered an HIV test at least once as part of routine health care;
- Requires that, with some exceptions, information about a person's HIV status can only be disclosed (shared with others) if the person signs an HIV release form or if the form is signed by the person's legally appointed guardian or health care proxy;
- Applies to persons and facilities that directly provide health care services or social services and to anyone who receives HIV-related information about a person pursuant to a properly executed HIV release form;
- Requires that any person or facility whose work is covered by Article 27-F and who receives HIV-related information **MUST** keep that information confidential, as required by law.

What is confidential HIV-related information?

This is any information that shows a person:

- Had an HIV-related test (such as an HIV antibody test, CD4 test, viral load test, PCR [polymerase chain reaction] test, or other test);
- Has a diagnosis of living with HIV, HIV-related illness, or AIDS;
- Has been exposed to HIV;
- Has one of these conditions, including information on the person's sexual contacts or needle-sharing contacts; or
- Is a partner or sexual/ substance use contact of a person diagnosed as living with HIV.

Under what circumstances is a person offered an HIV test?

HIV testing must be offered at least once to all patients age 13 or older as part of routine health care services provided in the following health care settings:

- Primary care services in diagnostic and treatment centers (including school-based clinics and family planning sites)
- Primary care services in outpatient departments of hospitals
- Inpatient departments of hospitals
- Emergency departments

HIV testing must be offered by physicians, physician assistants, nurse practitioners or midwives who provide primary care, or their representatives, regardless of setting.

Primary Care means the medical fields of:

- Family medicine
- General pediatrics
- Primary care
- Internal medicine
- Primary care obstetrics/gynecology

There are three exceptions to the requirement to offer HIV testing:

- If the individual is being treated for a life-threatening emergency;
- If the individual has previously been offered or has previously been tested for HIV (unless otherwise indicated due to more recent risk behavior);
- If the individual has been determined by the attending provider to lack mental capacity to consent.

Is consent required for an HIV test?

New York State law requires that a person be informed prior to an HIV test being conducted, including being informed that they have the right to decline an HIV test. Effective November 28, 2016, updates to public health law remove the requirement for obtaining consent for an HIV test in writing or orally, including elimination of written consent for HIV testing in New York State correctional facilities, and removing references to consent forms. The objective of the update to public health law is to eliminate barriers to HIV testing and make HIV testing comparable to the manner in which other important laboratory tests are conducted. HIV testing remains voluntary and patients have the right to refuse an HIV test, but obtaining written or oral consent for testing is no longer required in any setting. Patients must be advised orally that an HIV test is going to be performed. If the patient objects to the HIV test, this should be noted in the patient's medical record.

Can minors consent to their own HIV test, HIV treatment and HIV prevention services?

Yes. Minors have the ability to consent to an HIV test without parental involvement. They should be provided the required information about HIV and be told they have the right to decline an HIV test. Updates to public health regulation in 2016 also now allow minors to consent to HIV treatment and HIV preventive services, including pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis. (PEP).

What information must be given to a person before an HIV test is conducted?

Prior to conducting diagnostic HIV testing, information about HIV must be provided orally, in writing, through signage or in any other patient-friendly audio-visual format. Placing the NYS DOH HIV testing clinic poster in a visible location or providing patients with the NYS DOH patient brochure on HIV testing are simple ways of conveying this information to patients. The testing poster and brochure are available in seven different languages and can both be found here:

<https://www.health.ny.gov/diseases/aids/consumers/testing/index.htm>

When is it necessary to have a signed release form in order to share information?

Generally, HIV-related information can only be disclosed if the person signs an approved HIV release form. For example, a medical provider may not share confidential HIV information from a person's medical record with a case manager or other staff person from a community based organization without a signed release form. To disclose HIV-related information from a medical record to a non-medical provider for any purpose, including linkage to care, a specific signed release is required. The DOH Form 2557 Authorization for Release of Medical Information and Confidential HIV Related Information, is used for this purpose. This form allows for the release of both HIV-related information and non-HIV-related information. DOH Form 5032 titled Authorization for Release of Health Information (Including Alcohol/Drug Treatment and Mental Health Information) and Confidential HIV/AIDS Related Information is available for use when information to be released includes information about alcohol or substance use that is afforded additional protected under federal regulation 42-CFR Part 2.

In what situations may HIV-related information be disclosed without an approved HIV release form?

For medical treatment:

- Medical professionals working on the treatment team with the person's existing provider may discuss a patient's HIV-related information with each other or with their supervisors, but only to give necessary care;
- With a general release, a hospital or health care provider may share HIV-related information with a patient's insurance company if the information is needed to pay for medical care;
- Medical personnel and certain other supervisory staff may have access to HIV-related information to provide or monitor services if the person is in jail or prison or is on parole.

To monitor health care and disease prevention:

- Health care facility staff and committees, oversight review organizations, or government agencies that are authorized to have access to medical records may be given HIV-related information when it is needed to supervise, monitor, or administer a health service or social service;
- Known partners of a person newly diagnosed with HIV must be notified by a physician or public health officer that they have been exposed to HIV. Information about the source of infection will not be disclosed;
- Public health officials may have access to this information when required by law, such as HIV/AIDS case reporting to monitor disease trends and plan prevention programs;
- Researchers conducting research at an academic medical center with the approval of the medical center's Institutional Review Board, the board that is responsible for protecting human subjects.

To promote linkage and retention in HIV care:

If a person appears to be out of care, information may be shared between the Department of Health and a health care provider or care coordinator with a documented care relationship with the individual. If a person with HIV appears to be out of care, he or she may be contacted by the medical provider, care coordinator or health department staff to address barriers to entry into care and to promote engagement in care.

Other circumstances for releasing HIV-related information without an HIV-specific release form include:

- Authorized agencies that work with prospective adoptive or foster parents may have access to this information;
- A judge can issue a special court order that requires release of HIV-related information. The information cannot be released in response to a subpoena issued by an attorney;
- Article 27-F does not cover HIV testing when it is ordered solely for insurance reasons. This is covered by Insurance Law Section 2611. When an HIV test is given for insurance reasons, it generally includes a brief written consent and a referral to a counselor for further questions;
- Disclosure may occur without consent in certain cases of on-the-job exposure to HIV when all criteria for exposure have been met;

When releasing HIV-specific information to another party, is it necessary to include a statement that the information may not be re-disclosed without the protected individual's consent?

Generally speaking, a statement that information may not be re-disclosed should accompany all cases where HIV-related information is shared. However, there are a number of exceptions.

A re-disclosure statement is NOT required in the following situations:

- A health care provider or health facility shares the information when knowledge of the HIV-related information is necessary to provide appropriate care;
- Information is shared with third party reimbursers or their agents to the extent necessary to reimburse health care providers for health services; provided that, where necessary, an otherwise appropriate authorization for such disclosure has been secured by the provider;
- In instances of proper consent, which is defined as using the proper form. The proper form includes: specific authorized disclosure of HIV, name of protected individual, name of recipient, reason/ purpose, dated, time period of consent, signed;
- When clients themselves are disclosing HIV related information;
- Internal communications;
- When information is disclosed to parents/ legal guardians;
- For the purpose of contact notification;
- In the context of a court order;
- An authorized agency in conjunction with foster care/ adoption;
- Criminal justice agencies in order to carry out the department functions with respect to the protected individual;
- When disclosed to public health officials;
- When conducting service delivery review/ monitoring;
- When shared for the purpose of transplantation of organs.

An example of a redisclosure statement is the following:

“This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient for further disclosure.”

-Public Health Law § 2782 (5)(a)

Resources:

**New York State Department of Health HIV Confidentiality Hotline
800-962-5065**

Monday - Friday, 8:30 a.m. - 4:30 p.m.

**You can send a complaint report to:
Special Investigation Unit AIDS Institute**

New York State Department of Health
Empire State Plaza, Corning Tower #308
Albany, NY 12237

518-473-2300

To report a human rights violation anywhere in New York State:

New York State Division of Human Rights, Office of AIDS
Discrimination Issues

888-392-3644

To access the form for alleged violations of Article 27-F,
please see DOH form 2865, located here:
<https://www.health.ny.gov/forms/doh-2865.pdf>

For more information regarding federal privacy protection:

U.S. Department of Health and Human Services,
Office for Civil Rights

800-368-1019

For information and help with partner notification:

Partner Services

800-541-2437

Contact Notification Assistance Program (CNAP):

New York City only

212-693-1419 or call 311

For general information or possible legal assistance:

Legal Action Center

212-243-1313

To access informed consent forms and release forms and to learn
more about HIV/AIDS-related programs, policies, and regulations,
visit the NYSDOH website at:

www.health.ny.gov/diseases/aids/index.htm

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