

New York State Department of Health

New York State Confidentiality Law and HIV: Questions and Answers

Where to find this document on the NYS DOH website:

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http://www.health.state.ny.us/diseases/aids/facts/helpful_resources/confidentiality_law.htm

New York State Confidentiality Law and HIV: Questions and Answers

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;
- HIV infection or HIV/AIDS-related illness; or
- been treated for HIV/AIDS-related illness.

Public Health Law, Article 27-F:

- Requires that anyone who takes a voluntary HIV test must first sign a consent form. This means the person understands what the test means and agrees to take it.
- Requires that, with few 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 healthcare proxy.
- Applies to individuals and facilities that directly provide health 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 individual or facility whose work is covered by Article 27-F and who receives HIV-related information MUST keep that information confidential as required by the law.

What is confidential HIV-related information?

It is any information that shows a person:

- Had an HIV-related test (such as a HIV antibody test, PCR test, CD4 test for HIV, viral load test or other test);
- Has HIV-infection, HIV-related illness, or AIDS;
- Has been exposed to HIV; or
- Has one of these conditions, including information on the individual's contacts.

Who can consent to an HIV test?

Any person, no matter what age, can consent to an HIV test based on capacity to consent. Capacity to consent is a person's ability to understand, at the time of the test, what the test and the test results mean (whether or not the person is found to have HIV).

If it is determined that a person does NOT have the capacity to consent to the HIV test, another person - such as a parent or a legally appointed guardian - can consent for that person to be tested.

Are there times when written informed consent does not apply?

Yes. Requirements for consent do not apply if the HIV test is:

- performed as part of required Comprehensive Newborn Screening.
- self-administered using an FDA-approved HIV home test kit.
- needed to obtain, process, or use human body parts.
- being performed on a person who has died in order to determine the cause of death.
- for the purpose of tracking disease trends and for planning programs by authorized persons.
- related to working or serving in federal programs that require HIV testing (e.g. U.S. Armed Forces, Jobs Corps, and federal correctional facilities).

How does a person provide written informed consent to have an HIV test?

The New York State Department of Health form, Informed Consent to Perform HIV Testing (DOH 2556 and 2556i), must be reviewed by any person considering HIV testing. The form contains basic information to help a person make a decision about being tested for HIV. By signing this form, a person agrees to be tested to determine if he or she has HIV infection.

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

The following concepts must be shared with the patient before he or she takes the HIV test. All of these concepts are covered in Part A of the informed consent form:

- HIV is the virus that causes AIDS.
- The only way to know if you have HIV is to be tested.
- HIV testing is important for your health, especially for pregnant women.
- HIV testing is voluntary. Consent may be withdrawn at any time.
- Availability of anonymous and confidential HIV testing.
- State law protects the confidentiality of test results and also protects people who have been tested from discrimination based on their having been tested and their HIV status.
- Methods of preventing transmission.
- Persons who test positive are asked to cooperate with partner notification efforts to let those exposed to HIV become aware of their need to have an HIV test. Help notifying partners is available. The name of the person who tests positive, or any other identifying information, is not revealed to the partner.

The health care provider that orders the HIV test must insure that this information is given to the patient before the test is done. Providers give Part A of the consent form to individuals to review and are available to answer questions. The provider determines how best to ensure that the patient understands the information, taking into account the person's knowledge of HIV/AIDS and his or her ability to understand the informed consent form. Some individuals may need to review only the consent form, while others may need additional written, video, or audiovisual materials. Younger people or those with lower literacy skills are more likely to need more time and attention.

What information must be provided at the time HIV test results are received?

When test results are given, persons who test negative must be provided with information about:

- How to cope emotionally with the test results.
- Discrimination issues.
- Getting tested again in the future.
- How to protect against HIV infection.

Persons who test positive for HIV must be provided with information about the following:

- All of the points addressed for a negative test result.
- How to get referrals for medical evaluation, treatment, and counseling. Pregnant women are provided with referrals for medications to lower the chances of passing HIV to the baby.
- How to prevent further exposure to HIV infection.
- By law, cases of HIV must be reported to the state Department of Health to help monitor the epidemic.
- The need to cooperate with partner notification efforts to let those exposed to HIV become aware of their need to have an HIV test. Help notifying partners is available and can be done without revealing the name of the person who tests positive, or any other identifying information.

Under what conditions can HIV-related information be disclosed?

Generally, HIV-related information can only be disclosed if the person signs an approved HIV release form. The Department of Health form, HIPAA Compliant Authorization for Release of Medical Information and Confidential HIV Related Information (DOH 2557), is used for this purpose.

This form allows the release of both non-HIV and HIV-related information. A case manager or other healthcare worker will explain the form.

Whenever HIV-related information is disclosed, it must be accompanied by the following statement or a similar statement prohibiting further disclosure:

"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 this 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."

Under what circumstances can 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. A general release is needed to disclose medical information to a provider who is not affiliated with the person's current medical provider.
- 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.
- Disclosure may occur without consent in certain cases of on-the-job exposure to HIV when all criteria for exposure have been met.
- Parents or guardians of a minor or individuals who are legally authorized to provide consent can be given HIV-related information about the person if it is necessary to provide timely care, unless it would not be in the person's best interests to disclose the information.

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 or social service.
- Known partners of an HIV-positive person must be notified that they have been exposed to HIV by a physician or public health officer.

- 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).

Other circumstances:

- 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. HIV-related information cannot be released in response to a subpoena issued by an attorney.
- Public Health Law 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.

For general information and questions about HIV confidentiality, to report a possible violation of Article 27-F, or to get forms to report a possible violation of Article 27-F:

New York State Department of Health Confidentiality Hotline
800-962-5065
Monday - Friday, 8:30am - 4:30pm

You can send a complaint report to:

Special Investigation Unit
AIDS Institute/New York State Department of Health
90 Church Street
New York, NY 10007

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

New York State Division of Human Rights
Office of AIDS Discrimination Issues
20 Exchange Place
New York, NY 10005
800-523-2437

To report a human rights violation in New York City:

New York City Commission on Human Rights
AIDS Discrimination Division
40 Rector Street
New York, NY 10005
212-306-7500

For information and help with partner notification:

PartNer Assistance Program (PNAP)
800-541-2437

Contact Notification Assistance Program (CNAP) - New York City only
212-693-1419
888-792-1711

For general information and referrals:

Contact the Legal Action Center
212-243-1313

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