

6. Get consent for the disclosure when you need it.

Doctors generally need a patient's written consent to disclose HIV-related information to employers and others requiring medical forms. These consent requirements are in HIPAA and many state laws, including New York's.

7. Is it legal to ask about HIV/AIDS?

It depends on who is asking and when. Under the Americans with Disabilities Act, employers may not ask about HIV or any other "disability" until after making an offer conditioned on passing a medical exam or completing a medical form. Even then, there are limits. The rules for schools and other contexts vary. But even if the question is legal, excluding someone because of HIV/AIDS may be illegal discrimination.

TO LEARN MORE about when employers may ask about HIV/AIDS, or what to do about illegal questions, read "Are You Somebody with HIV/AIDS?..." and other LAC resources at lac.org/resources/hivaids-resources. New Yorkers also may call the Legal Action Center (LAC) at (212) 243-1313. For questions other than employment, call your local State or City human rights agency. In New York, you may call LAC at (212) 243-1313.



TO DISCLOSE OR NOT TO DISCLOSE

SEVEN THINGS TO KNOW ABOUT MEDICAL FORMS AND HIV

If you are a person living with HIV/AIDS (PLWHA) or a physician treating PLWHAs, you may face a dilemma when completing medical forms for employment, school, camp, guardianship, and other activities. Should you disclose HIV/AIDS information? Must you?

Disclosing HIV-related information can lead to discrimination and stigma. But it may be necessary to determine medical fitness for a job, educational program, or other opportunity. That is why HIV-related questions on medical forms are often legal. The following seven points should help you – patient or doctor – decide whether and how to disclose this sensitive information.



1. Is disclosing HIV status medically necessary?

The discussion should start here. Employers and others that require medical forms generally do so to assess fitness for the job or other opportunity – with or without a reasonable accommodation. Therefore, the patient and doctor should discuss whether there is a legitimate medical reason to share HIV-related information. For example, an employer may not need to know the HIV status of an applicant who is medically fit and does not need a reasonable accommodation. Likewise, a school may not need HIV-related information about a child who does not require medical attention during the school day. But a sleepaway camp might need to know a camper's HIV status to dispense medication.

2. Is preventing HIV transmission a reason to disclose?

The risk of HIV transmission in most settings requiring medical questionnaires is highly remote. It almost never justifies disclosing HIV information. Medical and public health authorities endorse the full participation of PLWHAs in almost every form of employment, sports, and schooling if their physicians deem them medically fit. If there is exposure to blood and certain bodily fluids, the authorities recommend using universal precautions, such as rubber gloves to prevent transmission of blood borne diseases such as HIV. Such precautions are standard practice and are not limited to cases of known HIV infection.

3. Do you – the patient – want to disclose your HIV status?

Maybe you prefer to limit disclosure of your HIV status because of pervasive stigma and discrimination. Or maybe you are comfortable disclosing it. Discuss your wishes with your doctor.

4. Does the form require HIV/AIDS disclosure? Read it carefully!

Medical forms may not always seek HIV-related information. Read the form carefully!

These questions may require disclosure. Even so, check to make sure the question is legal (read #7):

- ▶ **LIST ALL MEDICATIONS:** “All” means “all.” If the patient is taking HIV medications, they must be listed.
- ▶ **LIST ALL DIAGNOSES:** HIV and AIDS are diagnoses, so they must be disclosed. But if you, the physician, believe that your patient's HIV/AIDS does not impair his/her fitness for the job or other activity at issue, you could write something like “none that impair his ability to perform the job of [fill in type of job].” The employer might request more specifics, and you may then need to disclose. But be careful: writing only “none” – without the qualification – could be considered untruthful. Read #5, below.

These questions may not require disclosure:

- ▶ **LIST ANY COMMUNICABLE OR INFECTIOUS DISEASES:** HIV is not classified as a “communicable” or “infectious” disease in New York's health regulations (10 N.Y.C.R.R. § 2.1 and 23.1). Other states may be similar. In such a state, someone with HIV/AIDS could truthfully answer “no” to these questions.
- ▶ **DESCRIBE CONDITIONS THAT IMPAIR YOUR ABILITY TO** Some medical forms do not explicitly ask about HIV/AIDS. Instead, they seek information about medical conditions that would impair an individual's ability to successfully perform the job, participate in camp or school, successfully be a foster parent, etc. Physicians should decide whether HIV/AIDS is relevant to the patient's fitness. If not, the answer truthfully can be “none.”

5. Do not give false answers. Do not leave out legally required information.

Medical forms must be completed truthfully. False information – especially in response to legal questions – can result in disqualification. For example, if a person checks “no” next to a box about “HIV or AIDS?” and the employer later learns that is untrue, the employer can legally deny employment because of the inaccurate information. The same is true in most other contexts. In contrast, if the employer or school uses HIV information to deny admission illegally, the PLWHA might have a discrimination claim.