

Model HIV Confidentiality Policies & Procedures

for HIV Service Providers in New York State



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INTRODUCTION

The Legal Action Center (LAC) developed the following model HIV Confidentiality Policies and Procedures for health and social service agencies in New York State that are required to comply with New York State’s HIV confidentiality law, Article 27-F of the Public Health Law. That law requires covered agencies to establish written policies and procedures to maintain the confidentiality of HIV-related information.

Part I of this document offers guidance to assist agencies regulated or funded by the New York State Department of Health AIDS Institute to identify the applicable statutory, regulatory, or contractual provisions requiring them to develop and implement agency-specific HIV confidentiality policies and procedures.

Part II contains the model HIV Confidentiality Policies and Procedures, as well as instructions (in brackets and italics) for agencies preparing their own policies. Some provisions of the Model HIV Confidentiality Policies and Procedures may not be relevant to your agency. For example, provisions concerning minors may not apply to an agency that does not serve minors. Only use those provisions that are applicable.

The focus of this document is New York State’s HIV confidentiality law only, and not confidentiality laws applying to other forms of health information (e.g., mental health or substance use). Federal privacy protections in the Health Insurance Portability and Accountability Act (HIPAA) also protect the confidentiality of HIV-related information in many circumstances, but this document does not incorporate the requirements of HIPAA.

PART I: FRAMEWORK

A. New York State’s HIV Confidentiality Laws, Regulations, and Contractual Provisions

Law. New York State’s HIV Testing and Confidentiality law is in Article 27-F of the Public Health Law, §§ 2780-2787. The law can be found on the New York State Senate’s website, <https://www.nysenate.gov/legislation/laws/PBH/A27-F>. While Article 27-F governs HIV testing and confidentiality, these model policies only cover the law’s confidentiality requirements.

Additional provisions governing the confidentiality of HIV-related information are contained in New York’s HIV/AIDS case reporting and partner notification law, located in Article 21 of the Public Health Law, §§ 2130-2139, and New York’s privacy law for information about sexually transmitted infections (including HIV), located in Article 23 of the Public Health Law, § 2306. **This document refers to these statutes together as “Article 27-F” or the “HIV confidentiality laws.”**

Regulations. The New York State Department of Health (DOH) regulations implementing the HIV confidentiality laws are located in Title 10 of the New York Code of Rules and Regulations, 10 N.Y.C.R.R. Part 63. These regulations apply to a broad range of healthcare providers and organizations.

Section 63.9 requires healthcare providers and facilities regulated by the DOH to “develop and implement policies and procedures to maintain the confidentiality of HIV-related information” both internally, within the agency, and in communications with outside parties. The policies and procedures must include provisions for (1) initial employee in-service education regarding Article 27-F’s prohibition on disclosure of HIV-related information and HIV case reporting and partner notification law, (2) updates when relevant laws and regulations change, (3) maintenance of a list of job titles and specific functions for which employees are authorized to have access to HIV-related information (also known as a “need-to-know” list) and a requirement that all people on the need-to-know list receive HIV confidentiality education prior to gaining access to HIV-related information, (4) protocols for ensuring that records are maintained securely and used for the intended purpose, (5) procedures for handling requests by third parties for confidential HIV-related information, and (7) anti-discrimination protocols. *See Appendix 1 for the full text of 10 N.Y.C.R.R. § 63.9.*

Other State agencies that may fund or regulate your agency’s services have also issued regulations implementing Article 27-F’s confidentiality requirements. These State agencies’ regulations require service providers they fund or regulate to establish HIV confidentiality policies and procedures comparable to those required by the DOH. For additional information about the specific requirements of these State agencies’ Article 27-F regulations, contact the relevant State agency that funds or regulates your provider agency.

Contractual requirements. In addition, all organizations funded by the AIDS Institute are contractually required to establish agency-specific confidentiality policies and procedures for personal health-related information, which includes confidential HIV-related information. Appendix 2 contains copies of standard AIDS Institute contract provisions.

B. Determine How the HIV Confidentiality Laws Apply to Your Agency

The privacy provisions of the HIV confidentiality laws apply to each of the following:

1. Health or social service providers, which means persons who obtain HIV-related information about a protected individual (for definition, see Introduction in Part II, below) in the course of providing a “health or social service.” Not all health and social service providers fall under Article 27-F’s definition of “health or social service.” To determine whether your agency is covered, refer to Section 2780 of Article 27-F, excerpted in Appendix 3.
 - Check this box if your agency is a covered “health or social service” provider. If you checked off the box, then Article 27-F’s confidentiality requirements automatically apply to any HIV-related information your agency obtains about a protected individual.
2. Anyone who obtains HIV-related information pursuant to a “release of confidential HIV related information” (release form). Therefore, even if a person or agency is *not* a health or social service provider covered by Article 27-F, it still needs to comply with Article 27-F when it receives confidential HIV-related information pursuant to written release. For

example, if a public defender – who is not generally covered by Article 27-F – receives confidential HIV-related information about their client *pursuant to their client’s written release*, then the public defender becomes bound by Article 27-F’s requirements to maintain the confidentiality of that HIV-related information.

- Check this box if your agency is not one of the “health or social service” providers automatically covered by the law, but your agency has a contract with the AIDS Institute. The AIDS Institute requires all of the agencies with which it contracts to use a release form when receiving or requesting HIV-related information about their clients, even if the agency does not meet the definition of a “health or social service” provider. This way, individual’s HIV privacy is protected even if the agency is not otherwise covered by the HIV confidentiality laws. In addition, the AIDS Institute requires that employees use release forms to share client information with other employees within the same agency; this extends the HIV confidentiality laws to everyone in the agency who obtained the HIV-related information through the release form.

See Appendix 2 for standard AIDS Institute contract provisions, including Attachment D, which requires “all entities, organizations and community agencies who contract with the AIDS Institute” to use the DOH-approved release form “when receiving or requesting HIV-related information.”

C. Identify Which HIV Confidentiality Regulations Apply

DOH Part 63 regulations on “HIV/AIDS Testing, Reporting and Confidentiality of HIV Related Information,” 10 N.Y.C.R.R. Part 63.

The DOH Part 63 regulations may apply directly to your agency or specific units or staff. If your agency contracts with the AIDS Institute, then the regulations also apply contractually. Your agency’s contract with the AIDS Institute specifies that your agency will comply with appropriate provisions of the Part 63 regulations and AIDS Institute Policy.

- Check this box if DOH Part 63 regulations apply directly to your agency/personnel. To determine whether your agency is covered, refer to Section 63.2 of the regulations, excerpted in Appendix 1. List the specific agency staff/units directly subject to Part 63:
- Check here if your agency’s DOH/AIDS Institute contract requires compliance with Part 63 provisions. List the specific agency staff/units subject to these requirements:

Other New York State agency regulations on HIV confidentiality.

- Check here if your agency is regulated by a different State agency and must adhere to its HIV confidentiality regulations. Specify the agency and applicable HIV regulations:

PART II: MODEL HIV CONFIDENTIALITY POLICIES AND PROCEDURES

[Agency Name] HIV Confidentiality Policies and Procedures

Introduction

1. **Purpose.** The New York State HIV confidentiality laws (including Articles 21, 23, and 27-F of the Public Health Law) strictly protect the confidentiality of information about individuals who have undergone HIV-related testing, are living with HIV, or are contacts of individuals living with HIV. *[Agency name]* recognizes that it is essential to protect the confidentiality of such information in order to encourage people to learn their HIV status, obtain the HIV-related care and services they may need, and limit the harms that may result from the inappropriate use or disclosure of confidential HIV-related information.
2. **Confidentiality policy.** *[Agency name]* will maintain the confidentiality of all confidential HIV-related information (verbal and written) in accordance with the New York State HIV confidentiality laws, and *[add any of the following, as applicable to your agency: New York State regulations, including citations; Agency’s contract with the New York State Department of Health AIDS Institute; or the Health Insurance Portability and Accountability Act (HIPAA). See Part I Section C for more information.]*
3. **Staff responsible.** The *[designated staff]* *[choose one: is/are]* responsible for developing and, as needed, updating the agency’s HIV Confidentiality Policies and Procedures, and for ensuring that employees receive appropriate training on HIV confidentiality, as described in Section A below.
4. **Definitions.** For purposes of this Policy:

Agency. Agency means *[insert the name of your agency/organization]*.

Client. Client means a person who has received any services from *[choose one: this agency/agency’s HIV program]*, including *[specify services provided]*.

[Alternative definition: The agency may choose to use a different term than “client”—the term this document uses – in referring to the persons whose confidentiality is protected under these Policies and Procedures.]

Confidential HIV-related information. Confidential HIV-related information means any information that identifies or reasonably could identify a person who has been tested for HIV, has HIV infection, or HIV-related illness including AIDS, including information about the individual’s “contacts” (spouse, sexual partner, or needle-sharing partner, and as that term is defined in Article 27-F of the Public Health Law).

General release: General release means a written form that authorizes release of medical information generally as opposed to HIV-specific information. *[Include information here about where your agency's general release is located.]*

Release: Release means a written authorization for disclosure of confidential HIV-related information, signed by the individual, or if the individual lacks capacity to consent, a person authorized pursuant to law to consent to healthcare for the individual. Such release must contain the necessary information to comply with all applicable privacy laws, including Article 27-F of the Public Health Law. *[Include information here about where your agency's release is located.]*

[Your agency should define any other terms used in its HIV Confidentiality Policies which in the agency's judgment need to be uniformly understood by employees.]

A. Employee Training on HIV Confidentiality

1. Policy. Access to confidential HIV-related information maintained by Agency is authorized only after employees and *[specify other agency staff, as appropriate, e.g., consultants, interns, students, volunteers]* have been trained on the HIV confidentiality laws and their responsibilities regarding access to, use and disclosure of such information.
2. Training.
 - a. Initial education. Before being allowed access to any confidential HIV-related information about clients, all employees *[specify others as appropriate, e.g., interns, students, volunteers]* will receive training on the New York State HIV confidentiality laws and the HIV Confidentiality Policies and Procedures of Agency. *[Describe when, how and by whom this initial employee education is conducted.]*
 - b. Updates. All employees will receive updates when there are changes to relevant HIV confidentiality laws and regulations. *[Describe how and by whom the updates will be conducted. Also describe whether your agency will provide annual or other periodic reminders even when there are no changes in relevant laws or regulations. Though not required by law, these reminders may help ensure compliance.]*
3. Attestation. Each employee, upon receiving training, will sign an attestation *[see Appendix 4 for a sample employee attestation]* that they received such training, were informed of their responsibilities to maintain the confidentiality of clients' confidential HIV-related information in accordance with applicable law and Agency's HIV Confidentiality Policies and Procedures, and understands that violation of confidentiality statutes and requirements may lead to disciplinary action, including suspension or dismissal from employment and criminal prosecution.
4. Documentation. Each employee's signed attestation will be maintained in *[specify where maintained]*. Agency will maintain a list of all individuals who have received the initial and subsequent in-service trainings on HIV confidentiality in *[specify where maintained]*.

5. Contractors. Agency will advise any entities with which it contracts that the contractor must adhere to the HIV confidentiality laws with respect to any confidential HIV-related information received from Agency. Agency will document the fact that such notification occurred.

B. Educating Clients About HIV Confidentiality Policy and Rights

1. Agency will educate each prospective or new client about its HIV confidentiality policy and the client's rights under the policy. *[Explain when and in what form the education occurs. You may wish to include the following:]*
 - a. This explanation will include when, how, and for what purposes Agency employees are authorized to access confidential HIV-related information about clients. Each prospective/new client will be told that access is restricted to those Agency staff who need to know this information to deliver appropriate services and perform their authorized duties and responsibilities. *[Add, if required by agency's HIV Confidentiality Policies and Procedures, that confidential HIV-related information about the client will be shared internally among employees of the agency only with the client's written release.]*
 - b. Agency will provide this information to clients *[specify when and how the information will be provided, e.g., during the intake process, by verbally informing the client, or by offering each client a written summary of the client's confidentiality rights and the agency's HIV Confidentiality Policies and Procedures]*. Agency will document this discussion *[specify how]*.

C. Internal Communications: Sharing Confidential HIV-Related Information Within the Agency

[The following provisions should be used by agencies that provide a "health or social service" as defined in Section 2780 of the Public Health Law, as well as agencies that do not provide such a service, but have a contract with the AIDS Institute or have chosen to adopt the AIDS Institute policy (see Appendix 2).]

1. Policy. Agency employees may only access confidential HIV-related information about a client and disclose such information to other Agency employees in the following circumstances:
 - a. The job title of the employee receiving or disclosing the client's confidential HIV-related information is included in the Agency's Need-to-Know Protocol (below);
 - b. The employee receiving or disclosing the client's confidential HIV-related information (a) has been educated about applicable confidentiality requirements and (b) has signed the Employee Attestation *[see Appendix 4 for a sample employee attestation]*; and

- c. The employee accessing or receiving the client’s confidential HIV-related information has a reasonable need for that information in order to perform their duties in connection with the provision, supervision, or administration of Agency’s *[describe services]* to the client.

In all other circumstances, employees may access or disclose confidential HIV-related information only with a client’s consent, as described below in Section I.

2. Need-to- Know Protocol. Employees in the following job titles/positions are authorized to have access to confidential HIV-related information without the client’s consent when they need it in order to perform the following job functions: *[List job titles and specific functions for which access is authorized; see Appendix 5 – Sample Need to Know Policy & Protocol]*.
3. Authorized employees: restrictions on access and use. Employees who are authorized to access confidential HIV-related information about a client shall not:
 - Examine documents or computer data containing confidential HIV-related information or other information covered by Article 27-F of the Public Health Law unless necessary to perform authorized duties and responsibilities;
 - Remove from the Agency or copy such documents or computer data unless acting within the scope of assigned duties;
 - Discuss the content of such documents or computer data with any person unless that person has authorized access; *or*
 - Discriminate, abuse, or take any adverse action toward a person whose confidential HIV-related information is covered by Article 27-F of the Public Health Law.

[Only agencies that do not provide a “health or social service,” as defined by Section 2780 of the Public Health Law, but do have a contract with the AIDS Institute or have chosen to adopt the AIDS Institute Policy (see Appendix 2) should use the following paragraph:]

Confidential HIV-related information about a client will only be shared with other Agency employees who are authorized to receive that information pursuant to the client’s consent on an HIV-specific release form. Such release forms should authorize disclosures only to those Agency employees who need to know the information in order to provide Agency’s *[specify services]* to that client or for supervisory, administrative or reimbursement purposes as designated in the Need-to-Know Protocol. The job titles and job functions of such employees are: *[list job titles and specific job functions]*.

*[When creating a release form for intra-agency communications, in the section that says “name and address of person who will be given HIV related information,” your agency can simply describe the “need-to-know” policy, i.e., “Agency staff who need the information to provide *[describe services]*.”]*

D. Safeguarding Client Records and Information

The following procedures must be followed to ensure that Agency records containing

confidential HIV-related information, including electronic records, are maintained securely and used only by authorized persons and for authorized purposes.

1. Safeguarding paper and electronic client records within the Agency

Information about Agency's clients is recorded in the following locations:

- Agency's *[specify: database; electronic record system; and other electronic files, such as Excel or Word documents]*, which (a) *[indicate whether it is contained in a limited number of computer terminals that are not networked with other agency computers, or rather, is on a network but is password protected]* and (b) is accessible only to employees with authorized access (see Section C, above); *and*
- Each client's paper case file, created by the *[designate staff/position]* with direct responsibility for providing *[describe services]* to the client and stored in *[specify whether designated employee stores client files in a locked/lockable drawer(s) of the desk or file cabinet in his/her office] or in the agency's central record room. Explain whether closed case files are stored in a central file room or off premises and when they are shredded.]*.

Employees using paper or electronic files must ensure (1) that only authorized persons can see or access the files' confidential HIV-related information, including after working hours or when working remotely, and (2) such files not be lost or misplaced. Required security measures include the following:

- Paper files should not be left on desks or other surfaces viewable to unauthorized persons;
- Computer screens containing confidential HIV-related information should not be viewable by unauthorized persons; *and*
- Paper files and flash drives should be returned to their proper confidential location when they are not in use.

[Specify whether any files – paper or flash drives or e-mailed files – may ever be removed from the premises and, if so, under what conditions. It might be advisable to suggest that removal be minimized and only done with supervisor approval and that such files be returned to the workplace as quickly as possible.]

Documents containing confidential HIV-related information shall be shredded when they are no longer needed or obsolete *[or specify other method of disposing of such records in a manner that does not result in disclosure of such information to unauthorized persons]*. When electronic records containing confidential HIV-related information are no longer needed or obsolete, they must be destroyed, including sanitizing the electronic media on which such records are stored.

2. Conversations about clients

Telephone and face-to-face conversations that could reveal confidential HIV-related about

clients or other persons protected by Article 27-F should be held only where the conversations cannot be overheard by unauthorized persons.

3. How to contact clients

Ask clients how they prefer to be contacted (e.g., by phone, e-mail, or regular mail) and whether it is permissible to leave messages.

4. Mailing confidential HIV-related information

For paper mailings, avoid including confidential HIV-related information when possible. If such information must be mailed, ensure that confidential HIV-related information is not visible either on the envelope or through it (including when holding it up to the light). Use envelopes and paper with appropriate stock so that text on the paper inside the envelope is not visible through it, and ensure that envelopes are properly sealed. As needed, use a blank sheet around the content of the mailing. If the mailing includes identifying information (e.g., a letter with the client's name), ensure that each envelope contains the intended content; a letter to Jane Smith should not be inside an envelope addressed to Tom Black. In bulk mailings, it is a good practice to open a random sample of envelopes before sealing them to ensure that envelopes contain the correct letters. *[If the agency name contains the words "HIV" or "AIDS," the mailing protocol should address how to send letters without the agency's name in the return address.]*

5. Faxing and e-mailing confidential HIV-related information

Confidential HIV-related information will not be electronically transmitted or faxed to other authorized persons unless the employee has taken reasonable steps to ensure confidentiality at the recipient's end. Where possible, employees should avoid directly or indirectly revealing the identity of the individual who is the subject of confidential HIV-related information (for example, by referring to the individual by his/her first name only, by initials, or by non-identifying terms such as "client X"). In situations where client-identifying information must be faxed or e-mailed, employees should take the following precautions to ensure that the information is received only by the intended recipients:

a. Faxing

When sending confidential HIV-related information by fax, employees must take the following precautions:

- Call the receiving party in advance to ensure they will be at the fax machine when the document arrives;
- Use a fax cover sheet containing the Notice Prohibiting Redisdisclosure *[consider including information about where to locate agency's fax cover sheet; see Appendix 6 for a sample Notice Prohibiting Redisdisclosure]; and*
- Check that the fax number has been entered correctly before hitting "send."

b. E-mailing

When sending confidential HIV-related information by e-mail, employees must take the following precautions:

- Confirm the recipient's e-mail address before sending the e-mail;
- Consider protecting e-mail attachments with passwords and using secure, password-protected cloud-based systems to access e-mails or documents sent by e-mail; *and*
- Include the Notice Prohibiting Redisclosure in all electronic transmissions of confidential information [*include information about where to locate the language for the notice; see Appendix 6 for a sample Notice Prohibiting Redisclosure*].

[Receiving faxes also presents confidentiality risks insofar as confidential HIV-related information sitting in an output tray of a shared machine may end up in the hands of someone other than the intended recipient. To prevent that risk, agencies may want to receive faxes through e-mail to a secure e-mail address, and develop a protocol for how faxes are distributed to the intended recipient.]

6. Remote access and mobile devices

[Agencies have discretion about whether to permit employees' access to confidential HIV-related information remotely. If access is permitted, there should be strict procedures to protect confidentiality. The following are suggested provisions and are not meant to be exhaustive. Agencies also should have policies and procedures about protecting the confidentiality of all types of information (not just HIV information) accessed remotely. The HIV Confidentiality Policies and Procedures should reference those policies.]

At no time while engaged in remote access should an employee breach the HIV Confidentiality Policies and Procedures. The provisions of this policy apply to all situations where an employee works off-site, including on a temporary or irregular basis. This policy includes the following requirements:

- Equipment must be approved in advance of first use by [*list appropriate person*];
- Employee will make every reasonable effort to work in a private, secure area that will ensure that confidential HIV-related information will not be accessed; employees generally should not access confidential HIV-related information when in a public space;
- Employee will not permit access to confidential HIV-related information to any person not listed in Agency's Need-To-Know Protocol;
- Employee will not copy or store any confidential HIV-related information on a laptop or personal computer local storage system (hard drive or USB thumb drive) except if absolutely necessary, and in such cases, that information should be immediately deleted from the device upon completion of work;

- Documents containing confidential HIV-related information will not be printed while working remotely except when absolutely necessary;
- All portable devices should be password-protected to prevent unauthorized use. Mobile devices such as phones and tablets should require both a PIN and login password. Passwords should not be given to family members or anyone not authorized under Agency’s Need-To-Know Protocols. Users should not permit shared computers or portable devices to remember passwords and should clear stored passwords before ending the session.
- When connected remotely, users must always shut down, lock, log off, or put their computer or portable device to sleep when they need to temporarily leave the workstation;
- Personal and work e-mail accounts should not be merged on computers or mobile devices;
- Use of Agency’s laptops or other portable devices are only for authorized employees and are not to be loaned to or used by others;
- Portable devices should never be left unattended in a vehicle or public place;
- Employees must notify *[designated staff]* if device containing confidential HIV-related information is lost or stolen, unauthorized use has occurred, passwords are lost, stolen or disclosed, or there is any unusual systems behavior, such as missing files, frequent system crashes or misrouted messages.

E. Responding to Requests and Subpoenas

1. *[Designated staff]* is responsible for implementing and overseeing employees’ compliance with Agency’s protocols for responding to requests and subpoenas, when the response may reveal confidential HIV-related information. Any employee who receives such a request or subpoena shall refer it to *[designated staff]*.
2. The *[designated staff]* first will determine whether the Agency’s response to the request or subpoena might include confidential HIV-related information (e.g., the request is for part of the client’s record which contains confidential HIV-related information). If so, *[designated staff]* then will determine if the disclosure is authorized because (1) the client has signed – or is willing to sign – a valid special written release form authorizing that particular disclosure, or (2) the requesting party is authorized to obtain the information under one of the exceptions permitted by Article 27-F and described in this policy. **Note:** a subpoena, even one signed by a judge, does not authorize the disclosure of confidential HIV-related information. See paragraph 5, below, about how to respond to a subpoena.
3. If the *[designated staff]* determines that the Agency is authorized to make the disclosure, it may do so and must:

- a. Document in the client’s file the authorization for the disclosure (e.g., release signed by client), who requested and received the information, and the date, contents and purpose of the disclosure.
 - b. For disclosures authorized by the client’s written release, such documentation can occur by referencing or including a copy of the release form and noting the date of the disclosure.
 - c. Give the recipient the Notice Prohibiting Redisclosure [*see Appendix 6*] and include a copy in the client’s file. For oral disclosures, this notice must be given within 10 days of the disclosure.
4. If the [*designated staff*] determines that the Agency is *not* authorized to make the disclosure, the [*designated staff*] will inform whoever requested or subpoenaed the information that the information sought is confidential under state law and may not be disclosed without appropriate authorization.
 5. Subpoenas. The Agency will not ignore a subpoena that seeks to compel the disclosure of confidential HIV-related information about a client. When presented with a subpoena for confidential HIV-related information, the Agency will produce the required information *if and only if* (1) the client’s written release authorizes this particular disclosure, *or* (2) a court issues a special kind of order that complies with the detailed requirements of the HIV confidentiality laws. A court may only issue such an order when the court has determined that there is a (i) “compelling need” for the disclosure for adjudication of a criminal or civil case, (ii) a clear and imminent danger to life or health of a person unknowingly at significant risk, (iii) clear and imminent danger to the public health, or (iv) the applicant is lawfully entitled to the information and the disclosure is consistent with Article 27-F.
 6. If the Agency does not have the client’s consent and there is no such court order, then the Agency must either withhold those parts of the client’s record that contain confidential HIV-related information *or* redact the confidential HIV-related information. In either case, the Agency should provide the following notice with whatever records it does produce:

These records have been redacted to remove confidential information protected by state and/or federal privacy law, which prohibits the disclosure of such information without appropriate authorization (i.e., a written release of information) or pursuant to a special court order authorizing the disclosure. *See* Subpart E of 45 CFR Part 164; Subpart E of 42 CFR Part 2; Section 2785 of New York State Public Health Law; Section 33.13 of the New York State Mental Hygiene Law.

F. Communications with Client About Their Own Confidential HIV-Related Information

1. Agency staff may disclose confidential HIV-related information about a particular client to the client without obtaining their written release. When the client lacks capacity to consent, disclosures may be made to the person legally authorized to consent to healthcare for the

client. Any disclosure by an Agency staff member to a client must be noted in the client's record.

2. A client has the right to be informed of any disclosure of confidential HIV-related information by Agency staff.
3. A client may disclose their own HIV status to any other person. However, Agency staff may counsel clients about the possible consequences of such disclosures – including the possibility of that information being shared on social media – so that clients can make informed decisions.

G. Disclosures to Client’s Family, Friends, and Others Involved in Client’s Care

1. Agency staff must obtain a client’s written release before disclosing a client’s confidential HIV-related information with their family, friends, and others involved in their care; limited exceptions for clients without capacity are discussed in Section J.2, below. A verbal release to share health information *is never sufficient* to authorize a disclosure of confidential HIV-related information to a client’s family, friends, or others involved in their care. This is true even though HIPAA often permits such disclosures.
2. Agency staff will take the following precautions when discussing the client’s health in the presence of the client’s family or friends:
 - Never disclose confidential HIV-related information without a written release authorizing the disclosure to the specific parties;
 - The release must authorize HIV-related information specifically because a general medical release is not sufficient;
 - If the client signs a release authorizing the disclosure, take care to limit disclosures to the minimum necessary;
 - If the client does not sign a release authorizing disclosure of confidential HIV-related information, Agency staff will ask to speak with the client privately *without implicitly disclosing* the confidential HIV-related information (e.g., “Is it okay if I speak with you privately for a minute?” or “Is there a good time we can speak alone?”).

H. Disclosures to Other Clients

1. No Agency staff member may directly or indirectly disclose any confidential HIV-related information about a client to any other client, unless either (1) the client about whom the information pertains first signs the required written release form authorizing that specific disclosure (see Section I, below), or (2) the disclosure is authorized by *[designated staff responsible for making decisions about disclosures without release]*.

I. Disclosures with Client's Consent

1. The Agency may disclose confidential HIV-related information about a client if the client signs a release form authorizing disclosure of their confidential HIV-related information *[specify your agency’s preferred release forms, which may include the following: DOH 2557*

– *Authorization for Release of Medical Information and Confidential HIV-Related Information; DOH 5032 – Authorization for Release of Health Information (Including Alcohol/Drug Treatment and Mental Health Information) and Confidential HIV/AIDS-Related Information; or another HIV-specific release form approved by New York State. Include information about where to locate such forms; the DOH forms are re-printed in Appendices 7 and 8, and available in several languages at www.health.state.ny.us/diseases/aids/forms.*

2. Whenever the Agency receives a request for confidential HIV-related information about a client or wishes to disclose a client’s confidential HIV-related information, the Agency will take each of the following steps:
 - a. Determine whether there is a signed release form. [*Designated staff*] will determine whether the client (or whoever is authorized by law to make healthcare decisions for the client) has signed a valid, un-expired release authorizing disclosure of the confidential HIV-related information, and that the disclosure is consistent with the purpose specified on the release. Oral release is *never* sufficient; neither is a general release form authorizing disclosures of medical or other information, *unless* the disclosure is to the client’s health insurer for reimbursement purposes (see Section J.7, below).
 - b. Seek a release, if there is none. If there is no signed release form, the [*designated staff*] will consult with the client to determine whether they are willing to consent to the disclosure and, if so, will obtain a written release. This Agency respects a client’s right to make their own decisions about whether to permit the disclosure of their confidential HIV-related information.
 - c. Assess capacity to consent, if necessary. [*Designated staff*] will assume that the client has capacity to consent (as defined by Article 27-F and described above) unless Agency staff have a reasonable basis for believing otherwise. If there is a question about the client’s capacity to consent, notify [*designated staff*], who will conduct an individualized assessment to determine whether, in the Agency’s judgment, the individual has or lacks capacity to consent to a proposed disclosure and will determine how to proceed.
 - d. If client does not want to sign release. If the client does not want to sign a release form, then the [*designated staff*] shall determine if there is any other provision under the HIV confidentiality laws that permits the disclosure. (See “Disclosures Without Client’s Consent,” Section J, below). If not, the disclosure may not be made.
 - e. Provide Notice Prohibiting Redisdisclosure. Any disclosure made pursuant to a release must be accompanied by the Notice Prohibiting Disclosure [*see Appendix 6*], except for disclosures made to healthcare providers for care and treatment (see Section J.1, below) and disclosures to insurers for healthcare reimbursement (see Section J.7, below). For oral disclosures, this notice must be sent within 10 days of the disclosure. A copy of this notice (or notation that it was sent) must be included in the client's file. (See Section D above.)

J. Disclosures Without Client’s Consent

1. Disclosures to outside healthcare providers

*[NOTE: The HIV confidentiality laws permit disclosure of confidential HIV-related information **without the client's consent** to outside healthcare providers or health facilities when necessary to provide appropriate care or treatment to the client, their child, or contact (spouse, sexual or needle-sharing partner). Nevertheless, the Department of Health recommends that when there is no emergency, community-based organizations (CBOs) should seek client consent before disclosing confidential HIV-related information to outside healthcare providers. When the CBO is facilitating the client’s engagement in health care, the CBO may ask the client to authorize a follow-up call with the healthcare provider to ensure the appointment was kept and the person is engaged in care. Some healthcare providers also may choose to seek patient consent in non-emergency circumstances, even though it is not legally required.]*

- a. The HIV confidentiality laws authorize this Agency to disclose confidential HIV-related information about a client, without a release, to certain outside healthcare providers or health facilities when the information is necessary for that provider to give appropriate care or treatment to the client, their child, or contact (spouse, sexual or needle-sharing partner). This Agency has the discretion to decide when any such disclosure meets those criteria. These decisions will be made by *[designated staff]*.
- b. *[Use the following sentence if the Agency’s policy is to require a written release to outside healthcare providers in non-emergency circumstances:]* If there is no emergency or undue time pressure, the Agency will seek to obtain the patient’s release authorizing the disclosure.
- c. Under New York State Department of Health standards, it is not legally permissible to disclose an individual's HIV status to other healthcare providers solely for infection control purposes. This is because casual contact creates no risk of HIV transmission, and any risk of direct occupational exposure to HIV that may be encountered by healthcare workers can be effectively minimized through universal infection control precautions.

2. Physician’s disclosures to persons authorized to make healthcare decisions for clients without capacity

[This policy is only applicable to agencies with a physician on staff.]

This policy applies to clients who do not have capacity to consent to their own healthcare (mainly very young children, but also some adolescents and adults determined to lack capacity). It addresses when an Agency *physician* (and only a physician) may disclose a client’s confidential HIV-related information to those persons who have authority to make healthcare decisions for the client. For the purposes of this policy, these persons will be referred to as the “parent/surrogate.”

Note: Since 2017, minors have had the legal authority to consent to their own HIV prevention

and treatment, so long as they have capacity to consent. These minors also have the right to control disclosure of their confidential HIV-related information. Therefore, physicians will rarely be permitted to disclose a minor's confidential HIV-related information to a parent/guardian without the minor's consent. When the minor lacks capacity, however (e.g., because the minor is three years old), they do not have the right to consent to their own health care or to the disclosure of their confidential HIV-related information.

- a. If any Agency staff believes that there is a legitimate need to disclose confidential HIV-related information about a client without capacity to their parent/surrogate, the employee must consult with *[designated staff; note that the agency physician must be among the designated parties]* about the reasons for making such a disclosure.
- b. The Agency physician *may* (but need not) disclose confidential HIV-related information about a client to their parent/surrogate if:
 - i. The physician reasonably believes the disclosure is medically necessary to provide timely care and treatment to the client; *and*
 - ii. The *[designated staff]* has counseled the client about the need to make the particular disclosure, and the client will not inform their parent/surrogate or consent to the disclosure;

But, the physician will not make such a disclosure if:

- iii. In the physician's judgment, the disclosure would not be in the best interest of the client; or
 - iv. The client has legal authority to consent to the care or treatment in question.
- c. Any decision or action by a physician under this rule, and the reason(s) for it, must be recorded in the client's medical record.

3. Partner notification and disclosures to "contacts" of clients living with HIV

*[This policy is written for agencies whose staff are **not** mandated HIV/AIDS case reporters, as defined in Sections 2130-2139 of the Public Health Law, and whose staff accordingly do not have a legal duty to report cases or the known contacts of individuals living with HIV. Those agencies that are mandated HIV/AIDS case reporters should use the policy in Section J.4, below.)]*

a. General principals

Agency staff may learn that a client living with HIV is engaging in or intends to engage in behavior known to create a significant risk of HIV transmission, for example when a person:

- Is not virally suppressed;
- Has recently had a sexually transmitted disease;

- Is not engaged in care; or
- Has recently moved to New York State from another jurisdiction.

Agency staff may believe that they have an ethical or professional obligation, or legal duty, to notify the third person of this risk of exposure. Partner Services can assist with re-engaging the person in care and with any appropriate partner notification. (For more information, visit https://health.ny.gov/diseases/communicable/std/partner_services/index.htm.)

The HIV confidentiality laws give physicians (*only* physicians) the discretion to inform certain "contacts" of a person who is living with HIV but is not virally suppressed about their possible exposure to HIV. These "contacts" may include identified spouses, sexual partners, or needle-sharing partners of a person living with HIV. The New York State Department of Health encourages physicians to work with Partner Services when any patient is hesitant to notify sexual or needle-sharing partners, rather than conducting notification themselves. *[If the Agency has a policy recommending that physicians work with the New York State Department of Health in these circumstances, note it here or in the next paragraph.]*

While the Agency will attempt to reduce the risk of HIV transmission to clients' contacts through educational efforts (e.g., literature distribution, live educational and counseling sessions, *[list other activities]*), the Agency might decide that further steps are warranted in some circumstances, including referral to the Department of Health's Partner Services program.

b. Procedures

If any Agency staff believes that an identified contact of a client who is living with HIV but not virally suppressed is unknowingly at significant risk of HIV transmission, the employee must consult with *[designated staff]* about whether to notify the at-risk contact of the risk. *[In agencies with physicians on staff, the physician must be included in this designated group.]*

- i. The *[designated staff]* will decide if a disclosure is medically appropriate and if there is a significant risk of transmission to the identified contact. A significant risk may exist if there are reasonable grounds to believe that (i) the *contact does not know* the HIV status of the client, and (ii) the client is not virally suppressed, has had a recent sexually transmitted disease, is not engaged in care, or recently moved to New York State from another jurisdiction.
- ii. If the *[designated staff]* determine a disclosure is medically appropriate and a significant risk of transmission exists, the *[designated staff]* will offer the client the opportunity to notify the contact through one of the following means:
- iii. Partner Services. If the client signs a release, Agency staff may refer the client to the New York State Department of Health's Partner Services program (800-541-AIDS). In New York City, clients may be referred to the Contact Notification Assistance Program (C-NAP) (at 212-693-1419). Referrals to Partner Services are suitable even if the client is not ready to notify their contacts.

- iv. Facilitated self-disclosure. If the client signs a release, Agency staff may disclose the client's HIV status to the contact, or help the client disclose their status, ideally through an in-person, individual counseling session.
- v. Self-disclosure. If the client agrees to self-disclose their HIV status to the contact and signs a release, Agency staff may confirm the disclosure with the contact.
- vi. Physician disclosure. Agency staff may contact the patient's physician, who may notify the partner directly or refer the matter to the Department of Health's Partner Services Program or CNAP, as described above. A release is not legally required in order to contact the patient's doctor in this situation (see Section J.1 above, regarding disclosures of confidential HIV-related information to a client's healthcare provider when the Agency determines the healthcare provider needs to know the information in order to provide appropriate care or treatment to the protected individual *or his/her contact*); however, the Department of Health recommends that CBOs obtain a release for such disclosures.

If none of these means is effective, the Agency may seek a court order allowing contact notification. It must follow the special procedures in the HIV confidentiality laws. Agency staff will request counsel for these proceedings.

Document *any* of these methods of notification in the client's record.

[Agencies with a staff physician may add the following paragraphs (vii) – (ix):]

- vii. If the Agency physician believes disclosure is medically necessary and there is a significant risk of transmission for the reasons described in paragraph (a) above, the physician may notify the contact if the following conditions are met:
 - The physician counsels the client regarding the need to notify the contact;
 - The physician conducts a domestic violence screening with respect to each contact, to determine whether the client could face intimate partner notification if partner notification is conducted;
 - The physician informs the client that the physician intends to notify the contact of the contact's potential exposure; and
 - The physician honors the client's stated preference: the client may express a preference for the Agency physician to make the notification directly *or* refer the case to the public health authorities to make the notification. Note that even if the client prefers physician notification, the physician may decline and request that it be done by public health staff instead.
- viii. If the client requests, and the Agency physician *[optional: or their agent]* agrees to initiate notification, the physician will notify the contact in person if possible. The physician will tell the contact that they are at risk of contracting HIV, but will not

directly or indirectly disclose the identity of the client to the contact. The physician must provide or refer the contact for counseling and testing.

- ix. Any contact notification, whether conducted by the physician or referred to public health officials, must be noted in the client's medical record, together with the underlying reasons and procedures followed. *[Optional: The agency may want to develop a form for this purpose. If such a form is developed, describe where to locate it.]*

4. Disclosures to public health authorities for HIV/AIDS case reporting

[Only agencies that conduct HIV/AIDS case reporting under Section 2130 of the New York State Public Health Law should include this provision.]

- a. This Agency is required to comply with New York's HIV Case Reporting and Partner Notification law, Sections 2130-2139 of the New York Public Health Law.. The following Agency staff are mandated reporters: *[list all mandated reporters, e.g., physicians, etc.]*. Therefore, confidential HIV-related information may be disclosed to the New York State Department of Health to comply with these requirements. These reports include information about each new diagnosis of HIV or AIDS, as well as information about previously diagnosed individuals who the reporter is seeing for the first time. The contents of the reports are detailed in Section 2130 of the Public Health Law and on the Medical Provider Report Form DOH 4189.
- b. Confidential HIV-related information also may be disclosed in response to inquiries by DOH and care coordination systems for the purpose of current patients' linkage, retention in care, and care coordination.

5. Disclosures to oversight authorities for program monitoring, evaluation, and review

- a. The HIV confidentiality laws permit this Agency to disclose confidential HIV-related information to certain oversight agencies, if the information is reasonably necessary for program monitoring, evaluation, and review. The following entities are authorized by law to oversee, monitor, or evaluate the Agency's *[describe services]* to individuals protected by the HIV confidentiality laws:
 - Non-governmental: *[Identify list non-governmental oversight authorities, such as health facility staff committee or accreditation or oversight review organizations authorized to access medical records maintained by the agency.]*
 - Governmental: *[Identify/list federal, state or local government agencies that (1) supervise, monitor or administer the agency's program and (2) are authorized to access program records containing confidential HIV-related information when needed to supervise, monitor or administer the program.]*
- b. Any employee who receives a request from an oversight agency for clients' confidential

HIV-related information shall refer the request to *[designated staff]*, who will take the following steps:

- Ascertain whether the requesting party has the (i) legal authority and (ii) need for the confidential HIV-related information in order to conduct the authorized oversight/evaluation/review, and, if so, arrange for access and review; and
- Document the occurrence, including dates, authorization for the review, person(s) conducting the review for the oversight agency, and records/information accessed *[specify whether records should be listed specifically or described by category]*. This information will be documented *[describe how and where documented.]*

6. Disclosures for medical research

The HIV confidentiality laws permit this Agency to disclose confidential HIV-related information to qualified researchers for medical research purposes when a research protocol has been approved by a human research review committee per Article 24-A of the New York State Public Health Law, or an institutional review board consistent with the federal Common Rule, 42 U.S.C. § 289 and 45 C.F.R. Part 46, provided that any qualified researcher does not disclose information tending to identify the research subjects. *[Specify designated staff to oversee disclosures for medical research.]*

7. Occupational exposure

[This provision should only be used by agencies that meet the characteristics listed in 10 NYCRR § 63.8: (1) medical or dental offices; (2) facilities regulated, authorized, or supervised by the State Department of Health, Office of Addiction Services and Supports, Office of Mental Health, Office for People with Developmental Disabilities, Office of Children and Family Services, and Department of Corrections and Community Supervision; and (3) settings where emergency response personnel are performing an emergency response function under New York State law.]

When there is an on-the-job exposure to HIV that creates a significant risk of HIV transmission, as determined by medical experts in accordance with DOH standards, confidential HIV-related information about the source patient may be disclosed without the source patient's consent after taking the following steps:

- Incident report has been filed;
- The exposed worker has requested disclosure of the source's HIV status in order to make decisions about post-exposure prophylaxis;
- There has been appropriate review and certification by the exposed worker's medical provider (or facility's medical review officer); *and*
- The request has been documented in the exposed worker's medical record.

[Refer here to the agency's separate occupational exposure protocols.]

Performing an HIV test on the source person without their consent is permitted *only* when the source person is deceased, comatose, or determined by their attending professional to lack

capacity to consent. *[Refer to the agency's separate occupational exposure protocols.]*

8. Disclosures to insurers for healthcare reimbursement

[This section is for healthcare providers and facilities that seek reimbursement for healthcare services from public or private insurers.]

The *[designated staff]* shall ensure that all disclosures of confidential HIV-related information to insurers for reimbursement for healthcare services are made with the appropriate client consent. The consent must be written, but can be a general release; it does *not* need to be the HIV-specific release form discussed in Section I, above. **Note**, however, that it is permissible to use a general release form for such disclosures only if the following two conditions are met:

- The purpose of the disclosure is to obtain reimbursement for healthcare services; *and*
- The confidential HIV-related information is necessary for reimbursement.

If confidential HIV-related information does not need to be shared with an individual's insurer in order to obtain payment of the individual's healthcare claim, it will not be disclosed.

A copy of the general release form used by this Agency to obtain reimbursement from health insurers is *[describe where to find general release form]*.

This policy applies only to healthcare reimbursement claims. It does not cover applications for health or life insurance (e.g., HIV tests done for life insurance applications).

K. Grievance Procedures: Responding to Complaints of Confidentiality Violations

[It is advisable (though not required by the HIV confidentiality laws) for agencies to develop policies and procedures for responding to clients' complaints about HIV confidentiality violations. This section contains suggestions for grievance procedures. Agencies covered by HIPAA must provide a process for patients to make complaints concerning HIPAA policies and procedures, establish sanctions to be imposed against workforce for violations of privacy policies, designate a staff member to be responsible for receiving complaints, and document all complaints received and their disposition. In this section, agencies can refer to agency-wide grievance procedures if such procedures exist.]

1. Client complaints about violations of their HIV confidentiality should be referred to the *[designated staff]*, who should take the following steps:
 - Consult the Agency's written grievance procedures *[describe where these procedures are maintained]*;
 - Inform the client about the Agency's grievance procedures;
 - Inform the client about the right to file a complaint with the following:
 - The New York State DOH's Special Investigation Unit, 800-962-5065.
Complaints can also be mailed using the complaint form, available at

<http://www.health.ny.gov/forms/doh-2865.pdf>.

- *[If the agency is covered by HIPAA, add the following:]* The Office of Civil Rights of the U.S. Department of Health and Human Services, (800) 368-1019. Complaints can also be submitted online at <http://www.hhs.gov/hipaa/filing-a-complaint>.
 - Clients can also be referred to the Legal Action Center, (212) 243-1313, or (800) 223-4044, or other legal service providers.
- Conduct a *thorough* investigation, including speaking to witnesses (with the client's consent) and examining relevant documents; and
 - Consider obtaining client's feedback about information gathered in the investigation before arriving at ultimate conclusion.
2. When communicating with clients about their confidentiality complaints, acknowledge the importance of confidentiality and the value the Agency places on it; belittling the client's complaint often aggravates the situation.
 3. *[Consider creating a form that contains the conclusion of the grievance investigation as well as the referral information referenced above; reference the form here.]*

L. Non-Discrimination Policy

Under federal and New York State *[if located in New York City, add "and New York City;" if located in other cities with similar protections, you may add those]* laws, it is illegal for this Agency or its staff to discriminate against any individual who is qualified to receive our benefits or services because that person is living with HIV or is perceived to be living with HIV. People living with or perceived to be living with HIV who qualify for our services will receive them on a nondiscriminatory basis.

1. Admission/eligibility criteria

Ordinarily, no applicant for *[choose: admission/services]* will be asked or required to undergo HIV testing, to state whether they have undergone HIV testing, or to disclose their HIV status as a condition of *[choose: admission/receipt of services]*.

People known or believed to be living with HIV will be considered for *[choose: admission/receipt of services]* in accordance with the usual stated *[choose one: admission/eligibility]* criteria. No individual will be denied or terminated from this Agency's services because of their known or suspected HIV status, decision whether or not to undergo an HIV test, or disclosure or refusal to disclose HIV test results.

Every applicant for services who discloses that they have been diagnosed with an HIV-related condition (including AIDS) will be evaluated on a case-by-case basis in order to determine whether the individual meets the essential eligibility requirements for the Agency's services. If an applicant is currently able to participate in and benefit from the Agency's services, they are

entitled to receive them.

2. Reasonable accommodations for clients

Federal, New York State *[if located in New York City, add “and New York City;” if located in other cities with similar protections, you may add those]* law requires this Agency to make reasonable accommodations to the known handicaps or disabilities of our clients. Reasonable accommodations — adjustments in our program of services — may need to be made for persons living with HIV. These adjustments may include *[describe agency-specific examples]*. However, accommodations that would cause the Agency undue financial hardship or require it to change the basic nature of its services are not required.

The need for and nature of reasonable accommodations to be arranged for any individual client living with HIV will be assessed and decided on a case-by-case basis by *[designated staff]*.

3. Grievances about HIV discrimination

Client complaints about HIV discrimination by this Agency will be referred to the *[designated staff]*, who will follow the same procedures outlined in Section K, above.

Referrals should be made to the following agencies:

- The New York State Division of Human Rights, 55 Hanson Place, Rm. 1084, Brooklyn, NY 11217, 800-523-2437;
- *[If located in New York City, add:]* The New York City Commission on Human Rights, AIDS Discrimination Division, 40 Rector Street, New York, NY 10005, 212-306-7500; and
- The U.S. Department of Justice, Civil Rights Division, Disability Rights Section, https://www.ada.gov/filing_complaint.htm.

APPENDICES

MODEL HIV CONFIDENTIALITY POLICIES AND PROCEDURES

APPENDIX 1

Excerpts from New York State Department of Health Regulations Part 63 (HIV/AIDS Testing, Reporting and Confidentiality of HIV Related Information)

Citation: 10 N.Y.C.R.R. Part 63, §§ 63.1 – 63.11.

Statutory Authority: Public Health Law §§ 2786, 2139.

Section 63.2 – Application:

63.2 – Application. These regulations apply to physicians and other persons authorized by law to order laboratory tests or to make medical diagnoses, laboratories, blood banks, tissue banks and organ procurement organizations, to persons who receive confidential HIV-related information in the course of providing any health or social service and to persons who receive confidential HIV-related information pursuant to a release. These regulations do not apply to information which was received by the commissioner under Subpart 24-1 of this Title and protected from disclosure pursuant to Public Health Law, section 206(1)(j). These regulations do not apply to insurance institutions and insurance support organizations, except as noted in section 63.6(a)(9), (10) and (12) of this Part. Health care providers associated with or under contract to a health maintenance organization or other medical services plan are subject to these regulations.

Section 63.9 – Required Policies and Procedures on HIV Confidentiality:

63.9 – Health care provider and health facility policy and procedures. Each health care provider and health facility employing persons or contracting with persons to perform any activity related to such provider's or facility's rendering of health services shall develop and implement policies and procedures to maintain the confidentiality of confidential HIV-related information. Such policies and procedures shall assure that such information is disclosed to employees or contractors only when appropriate under this Part. Such policies and procedures shall include:

- (a) initial employee education inservice education of employees regarding the legal prohibition against unauthorized disclosure in Public Health Law Article 27-F and provisions of Article 21, Title III. Updates should be provided to all employees in cases of changes to relevant laws or regulations. A list of all employees who have had such training must be maintained by health care providers and health facilities. Health care providers and health facilities contracting with others for services in which HIV-related information may be disclosed to such contractors, must document evidence that such contractors have been informed of the confidentiality and disclosure requirements of this Part;
- (b) maintenance of a list of job titles and the specific employee functions within those titles for which employees are authorized to access such information. This list shall describe the limits of such access to information and must be provided to the employees during employee education sessions;
- (c) a requirement that only full-time or part-time employees, contractors and medical, nursing or

health-related students who have received such education on HIV confidentiality, or can document that they have received such education or training, shall have access to confidential HIV-related information while performing the authorized functions listed under paragraph (2) of this subdivision;

(d) protocols for ensuring that records, including records which are stored electronically, are maintained securely and used for the purpose intended;

(e) procedures for handling requests by other parties for confidential HIV-related information;

(f) protocols prohibiting employees/agents/contractors from discriminating against persons having or suspected of having HIV infection; and

(g) review of the policies and procedures on at least an annual basis.

APPENDIX 2

Excerpts from AIDS Institute Contractual Provisions on HIV Confidentiality (Contained in Contracts with AIDS Institute-Funded HIV Service Providers)

Attachment B of Standard AIDS Institute Contracts (updated April 2019)

2) Confidentiality:

- a) CONTRACTOR understands that the information obtained, collected or developed during the conduct of this agreement may be sensitive in nature. The Contractor hereby agrees that its officers, agents, employees and subcontractors shall treat all client/patient information which is obtained through performance under the Agreement, as confidential information to the extent required by the laws and regulations of the United States Codified in 42 CFR Part 2 (the Federal Confidentiality Law) and Chapter 584 of the laws of the State of New York (the New York State HIV Confidentiality Law) and the applicable portions of the New York State Department of Health Regulation Part 63 (AIDS Testing and the Confidentiality of HIV Related Information.)

- b) CONTRACTOR further agrees that its officers, agents, employees and subcontractors shall comply with the New York State Department of Health AIDS Institute policy “Access to and Disclosure of Personal Health Related Information,” attached hereto and made a part hereof as Attachment D.

Attachment D of Standard AIDS Institute Contracts

AIDS INSTITUTE POLICY Access to and Disclosure of Personal Health Related Information

1. Statement of Purpose

The purpose of this policy is to set forth methods and controls to restrict dissemination and maintain control of confidential personal health related information by contractors, subcontractors and other agents of the Department of Health AIDS Institute.

2. Definition

For the purpose of this policy, personal health related information means any information concerning the health of a person that identifies or could reasonably be used to identify a person.

3. Access

(a) Contractors, subcontractors or other agents of the Department of Health AIDS Institute are not to have access to personal health related information except as part of their official duties;

(b) Access to personal health related information by contractors, subcontracts or other agents of the Department of Health AIDS Institute is to be authorized only after employees have been trained in the responsibilities associated with access to the information;

(c) Contractors, subcontractors, or other agents of the Department of Health AIDS Institute may be authorized to have access to specific personal health related information only when reasonably necessary to perform the specific activities for which they have been designated.

4. Disclosure

All entities, organizations and community agencies who contract with the AIDS Institute shall utilize a Department of Health-approved "Authorization For Release of Confidential HIV Related Information" form (Form DOH-2557 or DOH-2557S) when receiving or requesting HIV-related information. No contractor, subcontractor or other agent of the Department of Health AIDS Institute who has knowledge of personal health related information in the course of employment, shall disclose such information to any other person unless such disclosure is in accordance with law, DOH regulations and policy, and the information is required to perform an officially designated function.

5. Disposition

Documents containing personal health related information shall be disposed of in a manner in which the confidentiality will not be compromised.

6. Confidentiality Protocols

(a) Each contractor, subcontractor or other agent of the Department of Health AIDS Institute will develop confidentiality protocols that meet the requirements of this section. The protocols shall include as necessary:

(1) measures to ensure that letters, memoranda and other documents containing personal health related information are accessible only by authorized personnel;

(2) measures to ensure that personal health related information stored electronically is protected from access by unauthorized persons;

(3) measures to ensure that only personal health related information necessary to fulfill authorized functions is maintained;

(4) measures to ensure that staff working with personal health related information secure such information from casual observance or loss and that such documents or files are returned to confidential storage on termination of use;

(5) measures to ensure that personal health related information is not inappropriately copied or removed from control;

(6) measures to provide safeguards to prevent discrimination, abuse or other adverse actions directed toward persons to whom personal health related information applies;

(7) measures to ensure that personal health related information is adequately secured after working hours;

(8) measures to ensure that transmittal of personal health related information outside of the contractor, subcontractor or other agent of the Department of Health AIDS Institute is in accordance with law, Department of Health regulation and policy;

(9) measures to protect the confidentiality of personal health related information being transferred to other units within the contractor, subcontractor or other agent's operation; and

(10) measures to ensure that documents or files that contain personal health related information that are obsolete or no longer needed are promptly disposed of in such a manner so as to not compromise the confidentiality of the documents.

(b) Protocols for ensuring confidentiality of personal health related information are to be updated whenever a program activity change renders the established protocol obsolete or inadequate.

7. Employee Training

(a) Employees of contractors, subcontractors of other agents of the Department of Health AIDS Institute are to be trained with respect to responsibilities and authorization to access personal health related information.

(b) Employees authorized to access personal health related information are to be advised in writing that they shall not:

(1) examine documents or computer data containing personal health related information unless required in the course of official duties and responsibilities;

(2) remove from the unit or copy such documents or computer data unless acting within the scope of assigned duties;

(3) discuss the content of such documents or computer data with any person unless that person had authorized access and the need to know the information discussed; and,

(4) illegally discriminate, abuse or harass a person to whom personal health related information applies.

8. Employee Attestation.

Each employee, upon receiving training, shall sign a statement acknowledging that violation of confidentiality statutes and rules may lead to disciplinary action, including suspension or dismissal from employment and criminal prosecution. Each employee's signed attestation is to be centrally maintained in the employee's personal history file.

APPENDIX 3

Excerpts from New York State HIV Confidentiality Law

Citation: NY Public Health Law Article 27-F, §§ 2780 et seq.

§ 2780 – Definition of “health or social service” under Article 27-F:

2780(8) “Health or social service” means any public or private care, treatment, clinical laboratory test, counseling or educational service for adults or children, and acute, chronic, custodial, residential, outpatient, home or other health care provided pursuant to this chapter or the social services law; public assistance or care as defined in article one of the social services law; employment-related services, housing services, foster care, shelter, protective services, day care, or preventive services provided pursuant to the social services law; services for the mentally disabled as defined in article one of the mental hygiene law; probation services, provided pursuant to articles twelve and twelve-A of the executive law; parole services, provided pursuant to article eight of the correction law; corrections and community supervision, provided pursuant to the correction law; detention and rehabilitative services provided pursuant to article nineteen-G of the executive law; and the activities of the health care worker HIV/HBV advisory panel pursuant to article twenty-seven-DD of this chapter.

2780(13) “Health care provider” means any physician, nurse, provider of services for the mentally disabled as defined in article one of the mental hygiene law, or other person involved in providing medical, nursing, counseling, or other health care or mental health service, including those associated with, or under contract to, a health maintenance organization or medical services plan.

APPENDIX 4

Sample Employee Attestation re: HIV Confidentiality Training

On _____ (date), I received training regarding confidential HIV-related information and my responsibilities in regard to maintaining the confidentiality of HIV-related information obtained and maintained by [Agency].

I also have [read/been informed of] and agree to follow [Agency]’s HIV Confidentiality Policies and Procedures.

I understand that in the course of my [employment/association] with [Agency], I may obtain confidential HIV-related information about [Agency]’s clients, or contacts (spouse, sexual partner, needle sharing partner) of [Agency]’s clients, or other individuals whose confidentiality is protected by law.

I have been advised that employees may be authorized to have access to confidential HIV-related information about clients only when reasonably necessary to perform their authorized job duties and responsibilities, as described in [Agency’s] Need-to-Know Protocol. *[If use of client’s written DOH-approved release to authorize internal access and disclosure by agency employees is required by law, applicable contract or Agency policy, state so here.]*

I understand that employees who are authorized to have access to such information shall not:

- (1) Examine documents or computer data containing confidential HIV-related information unless required in the course of performing authorized duties and responsibilities;
- (2) Remove from the Agency or copy such documents or computer data unless acting within the scope of assigned duties;
- (3) Discuss the content of such documents or computer data with any person unless that person has authorized access and needs to know the information; or
- (4) Illegally discriminate, abuse, or harass any person to whom confidential HIV-related information applies.

I agree not to disclose confidential HIV-related information about any client to any person without a written release from the individual to whom such information pertains, unless I am specifically authorized to make the disclosure without a release in accordance with applicable law and [Agency]’s HIV Confidentiality Policies and Procedures.

I acknowledge that violation of confidentiality laws and rules, and this Agency’s HIV Confidentiality Policies and Procedures, may lead to disciplinary action, including suspension or dismissal from employment and criminal prosecution.

Name: _____

Signature: _____

Date: _____

APPENDIX 5

Sample “Need to Know” Policy and Protocol

Policy: Confidentiality Obligations Concerning Clients with Confidential HIV-Related Information

This Agency and its employees shall comply with all applicable requirements of Article 27-F of the New York State Public Health Law and of the agency’s contract with the AIDS Institute concerning the confidentiality and disclosure of all HIV-related information concerning any client of the [Agency’s] HIV services program. *[If applicable, add sentence explaining HIPAA compliance.]*

Each employee shall therefore:

1. Be trained about, and sign a written attestation that they understand, and will abide by, their obligations to protect the confidentiality of all HIV-related information concerning [Agency]’s clients, in accordance with all applicable requirements of law; and
2. Disclose no confidential HIV-related information about any Agency client unless the disclosure is in accordance with law.

Protocol: Internal Communications Involving Clients’ Confidential HIV-Related Information

This protocol governs the circumstances in which [Agency] employees are authorized to have access to, or to disclose to other [Agency] employees, confidential HIV-related information about any individual (“client”) who has requested or received *[describe services]* from the Agency.

An [Agency] employee is authorized to access a client’s confidential HIV-related information and to disclose such information to another [Agency] employee, only in the following circumstances:

- (1) The job title of the employee receiving and disclosing the client's confidential HIV-related information is included in the [Agency’s] Need-to-Know list (below); and
- (2) The employee receiving and disclosing the client's HIV-related information (a) has been educated about applicable legal and contractual requirements governing the confidentiality and disclosure of such client information among and between [Agency] staff (including Public Health Law Article 27-F, Attachment D of the [Agency’s] contract with the AIDS Institute, and the Agency’s HIV Confidentiality Policy and Procedures), and (b) has signed a statement (attached) acknowledging that violation of any applicable confidentiality requirements may lead to disciplinary action, including suspension or dismissal from employment and criminal prosecution; and
- (3) The employee receiving the client's HIV-related information has a reasonable need for that information in order to perform their duties in connection with the provision,

supervision or administration of Agency's services to the client.

Need-to-Know List

[Identify by job title/position those employees who are authorized to obtain access to, and disclose internally to other authorized employees, HIV-related information about clients in order to perform specified functions and duties involving the provision, supervision or administration of specified services to those clients. Consider using the following categories of job titles in developing the agency-specific Need-to-Know list]:

1. Agency directors & management:

[May include agency managers with executive, administrative, management, supervisory, fiscal, reporting, quality improvement, or similar responsibilities requiring/involving access to confidential HIV-related information about clients.]

2. Fiscal operations:

[May include fiscal management and support staff with fiscal, billing/reimbursement, funding, or reporting responsibilities requiring/involving access to confidential HIV-related information about clients.]

3. Direct services:

[May include positions responsible for direct provision of services, or supervision of staff providing specified services to clients, or who participate in discussions regarding clients' cases.]

4. Client records & data:

[May include positions with responsibilities involving collecting, maintaining, filing, or reporting of client records, documents, and databases (written and electronic), if such activity requires or involves access to records containing confidential HIV-related information about clients.]

5. Receptionist/other positions with telephone/communication responsibilities associated with client services.

6. Interns, students, or volunteers performing functions in any of the above categories (varies).

APPENDIX 6

Sample Notice Prohibiting Redisclosure

Notice Prohibiting Redisclosure of Confidential Information

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 authorization for further disclosure. Disclosure of confidential HIV information that occurs as the result of a general authorization for the release of medical or other information will be in violation of state law and may result in a fine or jail sentence or both.

(Source: Public Health Law § 2782(5); 10 N.Y.C.R.R. § 63.5)

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