

New York State Department of Health
Emergency Responder Access to HIV-Related Information of Source Patient
Frequently Asked Questions
January 2009

Question 1: Are the Part 63 requirements new?

Answer: No. Part 63 regulations were developed to implement Chapter 584 of the Laws of 1988, which added Article 27-F to the NYS Public Health Law. Part 63.8(m) first took effect on January 1, 1989, when it was filed as an emergency regulation. It was re-filed as an emergency regulation many times, thereafter, until June 1, 2000, when it was made final.

What is new is that federal Ryan White CARE Act provisions that previously covered emergency response (EMS) providers' access to source patient information related to occupational exposures were eliminated by Congress. EMS providers requested that we clarify their ability to obtain access to source patient information in the context of NYS law and regulation.

Question 2: What if the source patient willingly consents to sharing information and/or HIV testing?

Answer: If a source patient authorizes the release of his/her HIV-related information to the exposed person or exposed person's medical provider, it is not necessary to implement the provisions of Part 63.8(m).

Disclosure is permitted for HIV-related information pursuant to a specific release form developed or approved by the New York State Department of Health. The release must be signed by the source patient, or if the source patient lacks capacity to consent, by a person authorized pursuant to law to consent to health care for the source patient. The following release forms may be used for this purpose:

- "Authorization for Release of Medical Information and Confidential HIV Related Information" (DOH-2557)
- "Informed Consent to Perform a Confidential HIV Test and Authorization for Release of HIV-related Information for Purposes of Providing Post-exposure Care to a Health Care Worker Exposed to a Patient's Blood or Body Fluids" (DOH-4054)

All written disclosures of confidential HIV information must be accompanied by a statement prohibiting redisclosure.

Question 3: Part 63.8(m)(3) covers situations in which an "exposure incident occurred to staff, employees or volunteers in the performance of employment or professional duties: (i) in a medical or dental office; or (ii) in a facility regulated, authorized or supervised by the Department of Health, Office of Mental Health, Office of Mental Retardation and Developmental Disabilities, Office of Children and Family Services, Office of Alcoholism

and Substance Abuse Services, Department of Correctional Services; or (iii) involved an emergency response employee, paid or volunteer, including an emergency medical technician, a firefighter, a law enforcement officer (e.g., police, probation, parole officer) or local correctional officer or medical staff.” Do the provisions of Part 63.8(m) apply to these groups, too?

Answer: Yes. Exposure incidents occurring to these individuals have been covered by Part 68.3(m) since 1989. The intent of our October 2008 letter was to clarify the ability of an emergency response employee to receive source patient information now that Part 63.8(m) is no longer superceded by federal law.

New York State law and Part 63.8(m) regulations provide a process to follow in those cases in which a source patient will not consent or is unable to consent to sharing his/her medical information. By following the procedures that are set forth in Part 68.3(m), information to allow for informed decision making regarding post-exposure prophylaxis (PEP) for the exposed person may be obtained.

Question 4: The letter states that the emergency response provider needs to be tested for HIV and be HIV negative to receive the source patient results. Why?

Answer: The thought behind this requirement was that, if the exposed person was already HIV-infected, there was no compelling reason for the source patient’s HIV status to be shared. This requirement was adopted prior to the recognition of HIV superinfection. It will remain in effect until the requirement is removed from Part 63.

The exposed person must be HIV-negative to receive the source patient’s HIV-related information without the source patient’s authorization. If the exposed person is HIV-positive or is of unknown HIV-infection status, he/she cannot access the source patient’s HIV-related information without the source patient’s authorization of the release of his/her HIV-related information. These requirements pertain to all parties listed in Part 63.8(m)(3).

Question 5: If the exposed person is HIV-positive and has been exposed to an HIV positive source patient, shouldn’t the exposed person and/or his or her medical provider have access to the source patient’s HIV-related information?

Answer: When the regulations were written, information regarding the source patient’s HIV status would not have changed the treatment of an exposed person who was already HIV-infected. Since then, scientific advancements have shown that knowing the resistance patterns of the source patient is useful to inform the clinical care of the exposed individual. Sharing of information using the “Authorization for Release of Medical Information and Confidential HIV Related Information” (DOH-2557) is recommended so that treatment decisions benefit from access to important information.

Question 6: Can the medical provider of an HIV-infected source patient share HIV-related information with the medical provider of the exposed individual without an “Authorization for Release of Medical Information and Confidential HIV Related Information” (DOH-2557) from the source patient?

Answer: No. Article 27-F of the New York State Public Health Law allows providers caring for the same patient to share information about that patient with each other. Article 27-F has never been interpreted to allow providers caring for two different patients to share HIV-related information about their respective patients without an “Authorization for Release of Medical Information and Confidential HIV Related Information” (DOH-2557). This was not the intent of the sponsors of Article 27-F.

Question 7: How can the exposed person and/or his/her medical provider access any available information regarding the source patient’s hepatitis B or hepatitis C infection status?

Answer: A request should be made to the hospital designee or medical provider of the source patient. No specific law or regulations require a special release for information relating to hepatitis B or C. Consequently, a general release of medical information is sufficient. The hospital designee or medical provider will be knowledgeable about the specific procedure(s) to be followed for release of information about the hepatitis B or hepatitis C status of the source patient.

Another option is to use the “Authorization for Release of Medical Information and Confidential HIV Related Information” (DOH-2557), which offers the source patient the opportunity to authorize release of both non-HIV medical information and HIV-related information.