

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

What Is Public Health Law, Article 27-F?

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

- Been tested for HIV;
- Been exposed to HIV;
- HIV infection or HIV/AIDS-related illness; or
- Been treated for HIV/AIDS-related illness.

Public Health Law, Article 27-F:

- Requires that anyone who takes a voluntary HIV test must first give informed consent. This means the person understands what the test means and agrees to take it. If the test is a rapid HIV test, oral consent is acceptable. If the test is not a rapid test, the person must sign a consent form or a general release form to receive health care services.
- Requires that, with some exceptions, information about a person's HIV status can only be disclosed (shared with others) if the person signs an HIV release form or if the form is signed by the person's legally appointed guardian or health care proxy.
- Applies to persons and facilities that directly provide health care services or social services and to anyone who receives HIV-related information about a person pursuant to a properly executed HIV release form.
- Requires that any person or facility whose work is covered by Article 27-F and who receives HIV-related information **MUST** keep that information confidential, as required by law.

What is confidential HIV-related information?

This is any information that shows a person:

- Had an HIV-related test (such as an HIV antibody test, CD4 test, viral load test, PCR [polymerase chain reaction]) test, or other test;
- Has HIV-infection, HIV-related illness, or AIDS;
- Has been exposed to HIV; or
- Has any of these conditions and has information on any of his or her sexual contacts or needle-sharing contacts.

Under what circumstances is a person offered an HIV test?

The New York State Department of Health requires that an HIV screening be offered to:

- Anyone between the ages of 13 and 64 years of age (or younger or older if there is evidence of risk activity) receiving health care services as an inpatient or in the emergency department of a hospital. An HIV test must also be offered to anyone receiving primary care services in the outpatient department of a hospital or in a free standing diagnostic and treatment center or from a physician, physician assistant, nurse practitioner, or midwife providing primary care.

The test must be offered unless the health care provider believes the person:

- Is being treated for a life-threatening emergency;
- Has previously been offered or been the subject of an HIV related test; or
- Lacks capacity to consent to such testing.

Is consent required for an HIV test?

If the test is a rapid HIV test, oral consent is acceptable. If the test is not a rapid test, the individual must sign a consent form for HIV testing or a general release form to receive health care services that provides an option to decline HIV testing.

Who can consent to an HIV test?

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

If it is determined that a person does NOT have the capacity to consent to the HIV test, another person — such as a parent, a legally appointed guardian, or an individual identified as a health care proxy or surrogate — can consent for that person to be tested.

Are there times when written informed consent does not apply?

Yes. Consent is not required if the HIV test is:

- Performed as part of required Comprehensive Newborn Screening.
- Being administered to the source person in an accidental needlestick case or other potential occupational exposure to HIV, the source person lacks the capacity to consent, no persons with the legal authority to consent for the source person are available, and the person possibly exposed to HIV will benefit medically from the source person's HIV test results.
- Self-administered using an FDA-approved HIV home test kit.
- Needed to obtain, process, or to use human body parts.
- Being performed on a deceased person to determine the cause of death.
- For the purpose of tracking disease trends and for planning programs by authorized persons.
- Related to working or serving in federal programs that require HIV testing (e.g., U.S. Armed Forces, Job Corps, and federal correctional facilities).

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

The following concepts must be shared with the patient before he or she takes the HIV test:

- HIV is the virus that causes AIDS. It can be spread through unprotected sex (vaginal, anal, or oral sex) with someone who has HIV; contact with HIV-infected blood by sharing needles (piercing, tattooing, or drug equipment, including needles); by HIV-infected pregnant women to their infants during pregnancy or delivery, or by breastfeeding.
- There are treatments for HIV/AIDS that can help a person stay healthy.
- People with HIV/AIDS can use safe practices to protect others from becoming infected. Safe practices also protect people with HIV/AIDS from being infected with different strains of HIV.
- Testing is voluntary and can be done without giving your name at a public testing center (anonymous testing).
- By law, HIV test results and other related information are kept confidential (private).
- Discrimination based on a person's HIV status is illegal. People who are discriminated against can get help.
- Consent for HIV-related testing remains in effect until it is withdrawn verbally or in writing. If the consent was given for a specific period of time, the consent applies to that time period only. Persons may withdraw their consent at any time.

What information must be provided when a person receives a positive HIV test result?

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

- How to prevent further exposure to HIV infection.
- The need to cooperate with partner notification efforts to let persons who may have been exposed to HIV know they should get an HIV test and get medical treatment, if necessary.
- Help notifying partners is available and can be done without revealing the name of the person who tests positive or any other identifying information.
- HIV cases must be reported to the state Department of Health to help monitor the epidemic.

Persons who test positive must also be provided with an appointment for follow-up care with a medical provider.

What information must be provided when a person receives a negative HIV test result?

When a person receives a negative HIV test result, he or she must be provided with information about:

- The risks of engaging in sexual activities or needle-sharing that can result in infection.
- How to protect against HIV infection.
- The potential need for further HIV testing if the person has engaged in risk behavior within the past three months or if he or she continues to engage in risk behavior in the future.
- Information does not need to be provided in person as long as the confidentiality of the information is ensured.

Under what circumstances can HIV-related information be disclosed?

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

This form allows for the release of both HIV-related information and non-HIV-related information. A case manager or other health care worker will explain the form. It is available on the NYSDOH website at: www.health.ny.gov/diseases/aids/forms.

Under what circumstances can HIV-related information be disclosed without an approved HIV release form?

For medical treatment:

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

To monitor health care and disease prevention:

- Health care facility staff and committees, oversight review organizations, or government agencies that are authorized to have access to medical records may be given HIV-related information when it is needed to supervise, monitor, or administer a health service or social service.
- Known partners of an HIV-positive person must be notified by a physician or public health officer that they have been exposed to HIV. Information about the source of infection will not be disclosed.
- Public health officials may have access to this information when required by law, such as HIV/AIDS case reporting to monitor disease trends and plan prevention programs.

Other circumstances for releasing HIV-related information include:

- Authorized agencies that work with prospective adoptive or foster parents may have access to this information.
- A judge can issue a special court order that requires release of HIV-related information. The information cannot be released in response to a subpoena issued by an attorney.
- Insurers may receive HIV-related information in order to process payment.
- Emergency care and health care workers who are accidentally exposed to potentially infectious body fluids may receive HIV-related information regarding the source of exposure.
- Parents or guardians of a minor or persons who are legally authorized to provide consent can be given HIV-related information about the person if it is necessary to provide timely care, unless it would not be in the person's best interests to disclose the information.

Information

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

New York State Department of Health HIV Confidentiality Hotline
800-962-5065
Monday - Friday, 8:30 a.m. - 4:30 p.m.

You can send a complaint report to:

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

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

New York State Division of Human Rights,
Office of AIDS Discrimination Issues
888-392-3644

For more information regarding federal privacy protection:

U.S. Department of Health and Human Services,
Office for Civil Rights
800-368-1019

For information and help with partner notification:

Partner Services
800-541-2437

Contact Notification Assistance Program (CNAP):

New York City only
212-693-1419

For general information and referrals:
Legal Action Center
212-243-1313

To access informed consent forms and release forms and to learn more about HIV/AIDS-related programs, policies, and regulations, visit the NYSDOH website at: www.health.ny.gov/diseases/aids/index.htm

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