



***MODEL* HIV CONFIDENTIALITY POLICIES &
PROCEDURES FOR HIV/AIDS SERVICE PROVIDERS
IN NEW YORK STATE**

*Prepared by the Legal Action Center
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Prepared by the Legal Action Center

INTRODUCTION

The following model HIV Confidentiality Policies and Procedures were developed by the Legal Action Center for health and human 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 the agencies it covers 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 and/or funded by the New York State Department of Health AIDS Institute to identify the applicable statutory, regulatory and/or contractual provisions requiring them to develop and implement agency-specific HIV confidentiality policies and procedures.

Part II contains both instructions (in brackets and italics) for agencies preparing their own HIV Confidentiality Policies and Procedures, and model language for these 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 abuse). Federal privacy rules, contained 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 Law, 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, enacted as Chapter 584 of the Laws of 1988. (The law can be downloaded from the New York State Senate's website, <http://public.leginfo.state.ny.us>). 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 (Article 21, Title III of the Public Health Law, §§ 2130-2139). This document refers to these statutes together as "Article 27-F" or the "HIV confidentiality law."

Regulations. The New York State Department of Health (DOH) regulations implementing the HIV confidentiality law are contained in volume 10 of the New York Code of Rules and Regulations, 10 N.Y.C.R.R. Part 63 (“HIV/AIDS Testing, Reporting and Confidentiality of HIV-related Information”). These regulations apply to a broad range of health care providers and organizations. Section 63.9 requires health care providers and facilities regulated by the DOH to “develop and implement policies and procedures to maintain the confidentiality of confidential 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 inservice 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. (Section 63.9 of the DOH regulations is set out in App. 1.)

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/AIDS Institute. For additional information about the specific requirements of these State agencies’ Article 27-F regulations, contact the relevant State agency which funds or regulates your agency.

Contractual requirements. In addition, all organizations funded by the AIDS Institute are required by their contracts with the AIDS Institute to establish agency-specific HIV confidentiality policies and procedures. App. 2 contains copies of standard AIDS Institute contract provisions, including Appendix F, titled “AIDS Institute Policy: Access to and Disclosure of Personal Health Related Information.”

B. Determine How the HIV Confidentiality Law Applies to Your Agency

The confidentiality provisions of the HIV confidentiality law apply to –

1. Health or social service providers, which means persons who obtain confidential 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." (“Health or social service” is defined in § 2780 of the law.) Not all health and social service providers fall under Article 27-F’s definition of “health or social service.” To confirm whether your agency is covered, see App. 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 gets HIV-related information pursuant to written release. For example, if a landlord – who is not generally covered by Article 27-F – receives HIV-related information from your agency about one of your client’s, pursuant to your clients written release, then the landlord 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 the law’s confidentiality provisions apply whenever you obtain confidential HIV-related information about a protected individual pursuant to a release (release form).

If you checked off this box and your agency has a contract with the AIDS Institute, read on. (If not, then skip to Sec. C, below.) To ensure that clients of agencies who do not fall under Article 27-F’s definition of “health or social service” provider receive the protections of the HIV confidentiality law, 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. In addition, the AIDS Institute requires that employees use release forms to share client information with other employees within the same agency. This way, everyone in the agency who obtained the HIV-related information through the release form is bound by the HIV confidentiality law.

See the standard AIDS Institute contract provisions (including “Appendix F” in App. 2. Note that Appendix F, Sec. 4 (“Disclosure”), 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 to Your Agency and/or its Specific Staff or Unit(s)

1. New York State DOH 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 and/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 set out in AIDS Institute contract Appendix F.

- Check here if DOH Part 63 regulations apply directly to your agency/personnel. (See provision on “Application” of regulations in

§ 63.2, App. 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. (See standard DOH/AIDS Institute contract provisions in App. 2 and check your own contract.). Specify the specific agency staff/units subject to these requirements:
-

2. Other New York State agency regulations on HIV confidentiality:

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

D. Decide on Terminology for Your HIV Confidentiality Policies and Procedures

Your agency's HIV Confidentiality Policies and Procedures should incorporate and/or reflect the following key concepts and definitions:

1. Confidential HIV-related information. Confidential HIV-related information means any information which identifies or could reasonably be used to identify a person who has been tested for HIV, has HIV infection, HIV-related illness, or AIDS, or is a "contact" (spouse, sexual or needle sharing partner) of such an individual.

[The agency may choose to use the more general term "personal health related information," used in AIDS Institute contract language (see App. 2, setting out AIDS Institute contract Appendix F), as follows: "Personal health information means any information concerning the health of a person which identifies or could reasonably be used to identify a person."]

2. Capacity to consent: Capacity to consent means an individual's ability, without regard to age, to understand and appreciate the nature and consequences of a proposed disclosure of HIV-related information, and to make an informed decision about whether to allow the disclosure.

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

PART II: MODEL HIV CONFIDENTIALITY POLICIES AND PROCEDURES

[Agency Name] HIV Confidentiality Policies and Procedures

Introduction

1. **Purpose.** The New York State HIV confidentiality law (Article 27-F of the Public Health Law) strictly protects the confidentiality of information about individuals who have undergone HIV-related testing, have HIV infection, HIV-related illness or AIDS, or are the “contacts” of these individuals. [This agency] 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 HIV-related information.
2. **Confidentiality Policy.** [This Agency] will maintain the confidentiality of all HIV-related information (verbal and written) in accordance with the New York State HIV confidentiality law [add, as applicable to your agency: regulations of the New York State [specify agency, e.g., Department of Health, 10 N.Y.C. R.R. Part 63; or other State agency’s regulations requiring your agency to comply with Article 27-F], and this agency’s contract with the New York State Department of Health AIDS Institute]. [also add, as appropriate, and the Health Insurance Portability and Accountability Act (HIPAA)].
3. **Staff responsible.** The [designate staff responsible] is/are responsible for developing and as needed updating the agency’s HIV Confidentiality Policies and Procedures, and for ensuring that employees receive initial and annual employee training on HIV confidentiality.
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 [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 the agency’s Confidentiality Policy and Procedures. If a different term is chosen, remember to use that term in lieu of “client.”]

Confidential HIV-related information. Confidential HIV-related information means any information which identifies or could reasonably be used to identify a person who has been tested for HIV, or has HIV infection, HIV-related illness including AIDS, or is a “contact” (spouse, sexual or needle sharing partner) of such an individual.

[Alternative definition: Your agency may opt to use the more general term, “personal health related information,” which is the term used in the AIDS Institute contract language (see App. 2, setting out AIDS Institute contract Appendix F). An agency that is a “covered entity” required to comply with HIPAA, whose Privacy Rule applies to both HIV and other health related information, might also choose to use this broader definition:]

Personal health information. Personal health information means any information concerning the health of a person which identifies or could reasonably be used to identify a person.]

General release (or “general consent”). Form that authorizes release of medical information generally as opposed to HIV-specific information.

A. Employee Training on HIV Confidentiality

1. Policy. Access to confidential HIV-related information maintained by this 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 law and their responsibilities regarding access to, use and disclosure of such information.
2. Training.
 - a. Initial education. Before being allowed access to any HIV-related information about clients, all employees [*and specify others as appropriate, e.g., interns, students, volunteers*] will receive training on the New York State HIV confidentiality law and the HIV Confidentiality Policies and Procedures of this agency. [*Describe when, how and by whom this initial employee education is conducted.*]
 - b. Updates. All employees also will receive updates when there are changes to relevant HIV confidentiality laws and regulations. relevant laws and regulations. [*Describe how and by whom the updates will be conducted.*] Also describe whether even when there are no changes in relevant laws or regulations, your agency also will provide annual or other periodic reminders of the requirements of Article 27-F and your agency’s policies and procedures. Though not required by law, these reminders may help ensure compliance]
3. Attestation. Each employee, upon receiving training, will sign an attestation [see Sample Employee Attestation (in App. 4)] that he or she has received such training, has been informed of the employee’s responsibilities to maintain the confidentiality of HIV-related information in accordance with applicable law and this 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]*. The agency will maintain a list of all individuals who have received the initial and annual in-service trainings on HIV confidentiality in *[specify where maintained]*.
5. Contractors. The agency also will advise any entities with which it contracts that the contractor must adhere to the HIV confidentiality requirements protecting the agency's clients. The agency will document the fact that such notification occurred.

B. Educating Clients about HIV Confidentiality Policy and Rights

1. The agency will educate each prospective/new client about its HIV confidentiality policy. *[Explain when and in what form the education occurs. Your agency may wish to include the following:]*
 - a. This explanation will include when, how and for what purposes agency employees are authorized to have access to 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 *[and add, if required by agency's HIV Confidentiality Policy, 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. The agency will provide this information to clients during the [intake] process, [verbally and/or by offering each client a written summary of the client's confidentiality rights and the agency's confidentiality policy and practices]. The agency will document this discussion *[explain how]*.

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

[The following three paragraphs should be used by agencies that provide a "health or social service" as defined the HIV confidentiality law, as well as agencies that do not provide such a service, but who have a contract with the AIDS Institute or have chosen to adopt the AIDS Institute policy (see App. 2)]:

1. Policy. Employees of this agency are authorized to access HIV-related information about a client, and/or to disclose such information about a client to other employees within this agency, only in the following circumstances:

- a. the job title of the employee receiving and/or disclosing the client's HIV-related information is included in the agency's Need to Know list (below);
- b. the employee receiving and/or disclosing the client's HIV-related information (a) has been educated about applicable confidentiality requirements and (b) has signed the Employee Attestation (see App. 4); and
- c. the employee accessing or receiving the client's HIV-related information has a reasonable need for that information in order to perform his/her duties in connection with the provision, supervision or administration of [agency's services] to the client.

In all other circumstances, employees may access and/or disclose HIV-related information only with a client's consent (see Sec. H, below).

2. Need to Know Protocol/List. 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 Sample Need to Know Policy & Protocol, App. 5].
3. Authorized employees: restrictions on access and use. Employees who are authorized to access HIV-related information about a client shall not:
 - Examine documents or computer data containing HIV-related information or other information covered by Article 27-F of the Public Health Law unless required in order to perform authorized duties and responsibilities;
 - Remove from the [unit/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 directed toward a person to whom HIV-related information or other information covered by Article 27-F of the Public Health Law pertains.

[Only agencies that do not provide a "health or social service" as defined by the HIV confidentiality law, but do have a contract with the AIDS Institute or have chosen to adopt the AIDS Institute Policy (see App. 2) should use the following paragraph]:

HIV-related information about a client will only be shared with other employees within the agency 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 employees within the agency who need to know the information in order to provide the 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 devising 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 record the "need-to-know circle" just described.]

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 [Agency's] data base [and/or other files, such as Excel, Word], 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]* or and (b) is accessible only to employees with authorized access (see Sec. C, above);
- each client's paper case file, which is created by the [designate employee/position] with direct responsibility for providing [describe services] to the client and which is 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:

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

[Specify whether any files – paper, discs or memory sticks, 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*].

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, email and/or regular mail), whether to leave messages, etc.

4. 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 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 emailed, employees should take the following precautions to ensure that the information is received only by the intended recipients:

a. Faxing.

- Call the receiving party in advance to ensure that that s/he will be at the fax machine when the document arrives.
- Use a fax cover sheet containing the Statement Prohibiting Disclosure of Confidential information (see App. 6).
- Check that the fax number has been entered correctly before hitting "send."

b. E-mailing.

- Confirm the recipient's e-mail address before sending the email.
- Include the Agency Notice Prohibiting Disclosure of confidential information (see App. 6 and Sec. H.2.e, below) in all electronic transmissions of confidential information.

5. Remote access and mobile devices

[Agencies have discretion about whether to permit HIV-related information to be accessed remotely. If access is permitted, there should be strict procedures to protect confidentiality. The following are suggested provisions 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. HIV policies and procedures should reference those policies.]

At no time, while engaged in remote access should an employee breach Agency's confidentiality policy. The provisions of this policy apply to all situations where an employee works off-site including on a temporary or irregular basis.

Requirements of this policy:

1. Equipment must be approved in advance of first use by *[list appropriate person]*;
2. Employee will make every reasonable effort to work in a private, secure area that will ensure that HIV-related information will not be accessed; employees generally should not access HIV-related information when in a public space;
3. Employee will not permit access to HIV-related information to any person not on Agency's need-to-know list;
4. Employee will not copy or store any HIV-related information on a laptop or personal computer local storage system (hard drive, USB thumb drive or CD) except if absolutely necessary, and in such cases, that information should be immediately deleted from the device upon completion of work;
5. Documents containing HIV-related information will not be printed while working remotely except when absolutely necessary;
6. 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 and any portable devices to remember passwords and should clear stored passwords before ending the session.
7. 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 work station;
8. Personal and work email accounts should not be merged on computers or mobile devices;

9. Use of Agency's laptops [*or portable devices*] are only for authorized employees and are not to be loaned to or used by others.
10. Portable devices should never be left unattended in a vehicle or public place.
11. Employees must notify [*designate individual*] if device containing 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 & Subpoenas for HIV-related Information about Clients

1. [*Designate agency staff*] is responsible for implementing and overseeing employees' compliance with the Agency's protocols for responding to requests and subpoenas for confidential HIV-related information. Any employee who receives such a request or subpoena shall refer it to [*name the designated agency staff*].
2. The [*designated staff member*] 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: that a subpoena, even one signed by a judge, does not authorize the disclosure of confidential HIV-related information. (See par. 5, below, about how to respond to a subpoena.)
3. If the [*designated staff member*] determines that the Agency is authorized to make the disclosure, it may do so and must:
 - a) Document in the client's [*record/file*] the authorization for the disclosure (e.g., release signed by client (see Sec. H below)), 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 App. 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 member*] determines that the Agency is *not* authorized to make the disclosure, the [*designated staff member*] 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 HIV-related information about a client. When presented with a subpoena for 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 issued a special kind of order that complies with the detailed requirements of the HIV confidentiality law and that authorizes (or compels) the disclosure. 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 (blot out) the HIV-related information. In either case, the Agency should provide the following notice with whatever records it does produce:

"This agency maintains a policy of redacting/removing from all client records any information whose confidentiality is protected under state law, which prohibits the disclosure of such information without appropriate authorization. Appropriate authorization means either (1) written consent obtained in compliance with the requirements of Article 27-F of the Public Health Law, or (2) a special court order issued in accordance with Public Health Law § 2785. This notice is not intended to imply that these records contain any information protected by Article 27-F."

F. Communications with Client about His/her Own HIV-Related Information

1. Agency staff may disclose HIV-related information about a particular client to the client without obtaining his/her written release. When the client lacks capacity to consent, disclosures may be made to the person legally authorized to consent to health care for the client. Any disclosure by an agency staff member to a client must be noted in the client's [medical/clinical] record.
2. A client has the right to be informed of any disclosure of confidential HIV-related information by agency staff. A client may also tell any other person about his/her own HIV status. However, agency staff should ensure that clients are counseled about the possible consequences of such disclosures, so that they can make informed decisions.

G. 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 Sec. H, below and App. 7), or (2) the disclosure is authorized by [*designated agency staff responsible for making decisions about disclosures without release*].

H. Disclosures with Client's Consent

1. The Agency may disclose confidential HIV-related information about a client if client gives consent for that particular disclosure in a New York State Department of Health *Authorization for Release of Medical Information and Confidential HIV-related Information* (DOH 2557) form or *Authorization for Release of Health Information (Including Alcohol/Drug Treatment and Mental Health Information) and Confidential HIV/AIDS-related Information* (DOH-5032) form (the “DOH HIV release forms”) signed by the client (or if the client lacks capacity to consent to his/her own health care, by the person authorized by law to consent to such care) [*or describe another release form containing information consistent with these forms if your agency uses a different form*]. (The DOH forms are in Apps. 7 and 8.) The release forms – including in Spanish – also are available on the DOH website, www.health.state.ny.us/diseases/aids/forms.
2. Whenever the Agency receives a request for HIV-related information about a client or wishes to disclose a client’s HIV-related information –
 - a. Determine whether there is a signed release form. [*Designate staff responsible*] will determine whether the client (or whoever is authorized by law to make health care decisions for the client) has signed a DOH HIV release form authorizing that particular disclosure for the purpose specified. 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 Sec. I.7, below) or to an outside health care provider for the purpose of providing care or treatment to the patient (see Sec. I.1, below).
 - b. Seek a release, if no form signed. If there is no signed release form, the [*designate responsible staff*] will consult with the client to determine whether he/she is willing to consent to the disclosure and, if so, will obtain a written release. This Agency respects the right of clients with capacity to consent to make their own decisions about whether to permit the disclosure of their confidential HIV-related information.
 - c. Assess capacity to consent, if necessary. [*Designate staff responsible*] 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 agency 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 not willing to sign release. If the client does not want to sign a release form, then the [designate staff responsible] shall determine if there is any other provision under Article 27-F that permits the disclosure. (See “Disclosures Without Release,” Sec. I, below). If so, the disclosure may be made under that authorization. If not, the disclosure may not be made.
- e. Provide Notice Prohibiting Rediscovery. Any disclosure made pursuant to a release form must be accompanied by the Notice Prohibiting Disclosure, attached in App. 6, except for disclosures made to health care providers for care and treatment (as per Sec. I.1, below) and disclosures to insurers for health care reimbursement (per Sec. I.7, below). For oral disclosures, this notice must be given within 10 days. A copy of this notice (or notation that it was sent) must be inserted in the client's file. (See Sec. D above.)

I. Disclosures Without Client’s Consent

1. Disclosures to Outside Health Care Providers

*[NOTE: The HIV confidentiality law permits disclosure of HIV-related information, **without the client's consent** – written or oral – to outside health care providers or health facilities (see App. 1) when necessary to provide appropriate care or treatment to the client or his/her child or contact (spouse, sexual or needle-sharing partner). The Department of Health recommends that when there is no emergency, community-based organizations should always seek consent from the client anyway before disclosing HIV-related information to outside health care providers. This is so even when the outside provider may need that information in order to provide the client appropriate care or treatment. Some health care providers also may choose to seek patient consent in non-emergency circumstances, though it is not legally required.]*

- a. The HIV confidentiality law authorizes this Agency to disclose HIV-related information about a client, without a release form, to certain outside health care providers or health facilities (see App.1) when the information is necessary for that provider to give appropriate care or treatment to the client or his/her 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 [designate the responsible agency staff].
- b. *[Use the following sentence if the Agency’s policy is to require a written release to outside health care providers in non-emergency circumstances:]* If there is no emergency or undue time pressure, the Agency will try to obtain [choose one of the following: “the special written release authorizing a disclosure of HIV- related information (see App. 7)” [or] “a general medical release.”]
- c. Under State Department of Health standards, it is not legally permissible to disclose an individual's HIV status to other health care 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 health care workers can be effectively minimized through universal infection control precautions.

2. Physician's Disclosures About Minors and Incompetent Adults to Parents/Legal Guardians

[APPLICABLE ONLY TO AGENCIES WITH A PHYSICIAN ON STAFF]

This policy applies to (1) those minors (under age 18) who do *not* have legal authority to consent to their own health care and (2) some mentally or physically disabled adults who do not have legal capacity to consent to their own health care. It addresses when an Agency *physician* (only a physician) may disclose confidential HIV-related information about these individuals to those persons who have authority to make health care decisions for the minor/disabled person – whether it is their parents, legal guardians, or other person whom a court has given such authority. For purposes of this policy, these persons will be referred to as the "parent/guardian."

- a. If any Agency staff believes that there is a legitimate need to disclose HIV-related information about a minor/disabled client to his or her parent/guardian, the employee must consult with [*designated staff member(s); note that the agency physician must be included in this designated group*] about the reasons for making such a disclosure.
- b. The Agency physician *may* (but need not) disclose HIV-related information about a minor/disabled client, without the client's signed release, to his or her parent/guardian if:
 1. the physician reasonably believes the disclosure is medically necessary to provide timely care and treatment to the minor/disabled client; and
 2. the [*physician and/or other designated agency staff*] have counseled the minor/disabled client about the need to make the particular disclosure, but even after counseling, the minor/disabled client refuses to inform, or gives the physician reasonable grounds to believe that he or she will not inform, the parent/guardian.

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

3. in the physician's judgment, the disclosure would not be in the best interest of the minor/disabled client; or
4. the minor/disabled client has legal authority to consent to the care or treatment in question (without parental consent).

Most minors do *not* have legal authority to consent to their own health care, but the following minors do: married minors, pregnant minors, minors who are parents, emancipated minors, and minors who are seek or receive health care for certain sensitive health conditions, including: HIV testing (if the minor has “capacity to consent” (see “definitions” section), sexually transmitted diseases (“STDs”) and, in some circumstances, alcohol/drug and mental health problems. *Note* that minors who have the capacity to consent to their own health care also have the right to control disclosures of information about their treatment.

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. Disclosures to “Contacts” (sexual or needle-sharing partners) of HIV Infected Clients

*[This policy is written for agencies whose staff are **not** mandated HIV/AIDS case reporters, as defined by New York State’s HIV/AIDS Case Reporting and Partner Notification Law, Public Health Law, Article 21, Title III, (§§ 2130 –2139), and whose staff, accordingly, do not have a legal duty to report cases or the known contacts of individuals diagnosed with HIV infection, illness or AIDS, as do the diagnosing physicians/providers. Those agencies who are mandated HIV/AIDS case reporters should use the policy in Sec. 4, below.)]*

a. General principals

Agency staff may learn that an HIV-infected client is engaging in or intends to engage in behavior known to create a risk of HIV transmission — unsafe sex, or sharing needles or other drug injection equipment. As such, Agency staff may believe that they have an ethical or professional obligation, or legal duty, to warn the third person of this risk of exposure.

The State HIV confidentiality law gives physicians (*only* physicians) the discretion (but *not duty*) to warn certain "contacts" of an HIV-infected person in their care. These "contacts" include identified spouses, sexual partners or needle-sharing partners of an HIV-infected person.

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, [*and/or 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 an HIV-infected client is unknowingly at significant risk of HIV infection, the employee must consult with [*designated staff members responsible*] about whether to notify the at-risk partner of

his/her risk. [*In agencies with physicians on staff, the physician must be included in this designated group.*]

- i. The [*designated Agency 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* of the HIV status of the client, and (ii) the client and contact are engaging in unprotected sexual activity or unsafe needle-sharing.
- ii. If the [*designated Agency staff*] determine a disclosure is medically appropriate and a significant risk of transmission exists, the [*designated Agency staff*] will counsel the HIV-infected client about the need to disclose his or her HIV status to the contact through one of the following means:
 - a. with a written release, have Agency staff refer the client to the New York State Department of Health's Partner Services program at 800-541-AIDS, or in NYC, 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 have his/her contacts notified;
 - b. with a written release, have Agency staff disclose or help the client disclose the client's HIV status to the contact, through an individual counseling session in person, if possible; or
 - c. obtain the client's agreement to disclose his/her own HIV status to the contact and have the Agency confirm the disclosure (after the client signs a release);
 - d. having Agency staff contact the patient's doctor who may notify the partner or refer to the Department of Health's Partner Services Program or CNAP, as described above. While a release is not legally required in order to contact the patient's doctor in this situation (see Secs. b.iii-iv above, allowing disclosure of confidential HIV-related information to a client's health care provider(s) when the agency determines the health care provider(s) need to know the information in order to provide appropriate care or treatment to the protected individual *or his/her contact*), the Department of Health recommends that community based organizations obtain a release for such disclosures;

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

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

[*AGENCIES WITH A STAFF PHYSICIAN: use the following paragraphs (iii) – (v):*]

- iii. If the Agency physician has reasonable grounds to believe that the client will not inform the contact, then the Agency physician may conduct the required domestic violence screening with respect to each contact, in accordance with the DOH protocol, and inform the client that:
 - the physician intends to notify the contact(s) of the contact's potential exposure;
 - the physician is authorized by law to report the case and contact(s) to the [State/local] public health authorities with responsibility for conducting partner notification efforts;
 - the client may express a preference to have the Agency physician make the notification directly *or* refer the case to the [State or local] public health authorities to make the notification. The physician must honor the client's preference to have public health partner notification staff conduct the notification, but, if the client prefers physician notification, the physician may nevertheless decline and request that it be done by public health staff instead; and
 - the client's name and identity may not and will not be revealed to his or her contact(s) during notification.
- iv. If the client requests and the agency physician [or his/her agent] agrees to initiate notification, the physician will notify the contact, in person, if possible. The physician will tell the contact that he/she is at risk of being infected with HIV, but will not either directly or indirectly disclose the identity of the client to the contact. The physician must provide or refer the contact for counseling and testing.
- v. The physician's [or his/her agent's] direct notification, or disclosure of a client's HIV-related information to public health officials for contact notification purposes, must be noted in the client's medical record, together with the underlying reasons and procedures followed. [*The agency may want to develop a form for this purpose.*]

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 (NY Public Health Law Article 21, Title III, §§ 2130-2139). The following agency staff are mandated reporters: [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 diagnosis of HIV infection, HIV-related illness, and AIDS. The contents of the reports are detailed in § 2130 and on a required DOH form.

- b. Confidential HIV-related information also may be disclosed in response to DOH inquiries for the purpose of current patients' linkage and retention in care.

5. Disclosures to Oversight Authorities for Program Monitoring, Evaluation, & Review

- a. The HIV confidentiality law permits 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, and/or evaluate the Agency's program of [specify services] to individuals protected by the HIV confidentiality law:
- 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 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' HIV-related information shall refer the request to [designated Agency staff], who will –
- Ascertain whether the requesting party has the (i) legal authority and (ii) need for the HIV-related information in order to conduct the authorized oversight/evaluation/review, and, if so, arrange for access and review.
 - Document the occurrence [dates], authorization for the review, person(s) conducting the review for the oversight agency and records/information accessed [by category or list of specific records]. *[Agency should describe how and where documented.]*

6. Occupational Exposure

[This provision should only be used by the following occupational settings, listed in the DOH regulations, 10 NYCRR § 63.8: (1) medical or dental offices, (2) facilities regulated, authorized or supervised by one of the following New York State agencies: DOH, Office of Alcoholism or Substance Abuse Services, Office of Mental Health, Office for People with Developmental Disabilities, Office of Children and Family Services, and Department of Correction, and (3) settings where emergency response personnel are performing an emergency response function under New York State law.]

- a. 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 release, in the following circumstances: an 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 to the agency's separate occupational exposure protocols*].
- b. HIV testing the source person without his/her consent is permitted only when the source person is deceased, comatose or determined by his/her attending professional to lack mental capacity to consent and other conditions are met. [*Refer to the agency's separate occupational exposure protocols*] For patients who do consent, however, oral consent for a rapid test is permissible.

7. Disclosures to Insurers for Health Care Reimbursement

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

- a. The [*designated staff person*] shall ensure that all disclosures of HIV-related information to insurers – for reimbursement for health care 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 G, above. **Note**, however, that it is permissible to use a general release form for such disclosures only if –
 - the purpose of the disclosure is to obtain reimbursement for health care services,

and

 - the HIV-related information is necessary for reimbursement. If HIV-related information does not need to be shared with an individual's insurer in order to obtain payment of the individual's health care claim, it will not be disclosed.

A copy of the general release form this agency uses to obtain reimbursement from health insurers is [available from ____.]

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

J. Grievance Procedures: Responding to Complaints of Confidentiality Violations

[It is advisable (though not required by the HIV confidentiality law) 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.]

- a. Client complaints about HIV confidentiality violations should be referred to the [designated staff member], who should –
 - consult the Agency's written grievance procedures [state 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 either (i) the New York State DOH's Special Investigation Unit, 800-962-5065. Complaint can be sent to Special Investigation Unit, AIDS Institute/New York State Department of Health, 90 Church Street, New York, NY 10007; complaints forms are available at <http://health.ny.gov/forms/doh-2865.pdf>; or (ii) if the agency is covered by HIPAA, the Office of Civil Rights of the U.S. Department of Health and Human Services at (800) 368-1019. The form can be downloaded at <http://www.hhs.gov/ocr/privacy/>

Clients also can be referred to the Legal Action Center, (212) 243-1313, or (800) 223-4044, or other legal service providers.

 - conduct a *thorough* investigation (with the client's consent – talk to witnesses, and not only to the individual who is the subject of the complaint; examine relevant documents); and
 - consider obtaining client's feedback about information gathered in the investigation before arriving at ultimate conclusion.
- b. 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.
- c. *[Consider making a form that contains the conclusion of the grievance investigation as well as the referral information referenced above; reference the form here.]*

K. Non-Discrimination Policy

Under federal and New York State [and New York City] laws, it is illegal for this agency and its staff to discriminate against any individual who is qualified to receive our benefits or services solely because that person has HIV/AIDS or is perceived as having HIV/AIDS. People who have or are perceived to have HIV/AIDS who qualify for our services will receive them on a nondiscriminatory basis.

1. Admission/Eligibility Criteria

- a. Ordinarily, no applicant for admission [services] will be asked or required to undergo HIV testing, to state whether he or she has undergone HIV testing, or to disclose his or her HIV status, as a condition of admission [receipt of this agency's services].
- b. People with known or suspected HIV infection or illness will be considered for admission [receipt of the agency's services] in accordance with the usual stated admission [eligibility] criteria. No individual will be denied or terminated from this agency's services solely because of his or her known or suspected HIV status, decision whether or not to undergo an HIV test, or disclosure or refusal to disclose HIV test results.
- c. Every applicant for services who discloses that he or she has 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, he or she is entitled to receive them.

2. Reasonable Accommodations for Clients

- a. Federal, New York State [and New York City] 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 with HIV infection or related illness. These adjustments may include [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.
- b. The need for and nature of reasonable accommodations to be arranged for any individual client with HIV infection or illness will be assessed and decided on a case-by-case basis by [*designated agency staff member(s)*].

3. Grievances about HIV discrimination

- a. Client complaints about HIV discrimination by this Agency will be referred to the [*designated staff member*], who will follow the same procedures outlined in Sec. J, above.

- b. Referrals should be made to (i) the New York State Division of Human Rights, 55 Hanson Place, Rm. 1084, Brooklyn, NY 11217, 800-523-2437, (ii) in New York City, to the New York City Commission on Human Rights, AIDS Discrimination Division, 40 Rector Street, New York, NY 10005, 212-306-7500, and (iii) the federal agency with jurisdiction over the matter. For details, see the U.S. Department of Justice website, www.ada.gov.

APPENDICES TO

MODEL HIV CONFIDENTIALITY

POLICIES AND PROCEDURES

APPENDIX 1

Excerpts from New York State Department of Health Regulation 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, section 2786 and Article 21, Title III (section 2139).

(1) 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.

(2) 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

AIDS Institute Contractual Provisions on HIV Confidentiality (Contained in NYS Department of Health AIDS Institute Contracts with AIDS Institute Funded HIV Service Providers)

(1) Appendix A-2 (Standard Clauses for All AIDS Institute Contracts):

Clause 7: The CONTRACTOR, its officers, agents, employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York, including Chapter 584 of the Laws of 1988 (the New York State HIV Confidentiality Law) and the appropriate portions of the New York State Department of Health Regulation Part 63 (AIDS Testing and Confidentiality of HIV Related Information).

Clause 8: The CONTRACTOR, subcontractors or other agents must comply with New York State Department of Health AIDS Institute policy regarding access to and disclosure of personal health related information attached to this AGREEMENT as Appendix F and made a part hereof.

(2) Appendix F of Standard AIDS Institute Contracts

APPENDIX F

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 which 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),* copies of which are included in this Appendix F, 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.

*** Current DOH-approved Release Form:**

HIPPA Compliant Authorization for Release of Medical Information and Confidential HIV*Related Information (DOH 2557 (8/05)).

You can download or order copies of this from the NYS Department of Health website:
<http://www.health.state.ny.us/diseases/aids/forms/>

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 which 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

New York State HIV Confidentiality Law – Excerpts

Citation: NYS Public Health Law Article 27-F

(Chapter 584 of the Laws of 1988, codified as Pub. Health L. §§ 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

Employee Attestation
Confidential HIV-Related Information

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 HIV-related information unless required in the course of performing [authorized] duties and responsibilities.
- (2) remove from the [Agency/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 has authorized access and a need to know the information discussed; or
- (4) illegally discriminate, abuse or harass any person to whom HIV-related [personal health] information applies.

I agree not to disclose confidential HIV-related information [about any client] to any person without a specific, 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 this Agency's HIV Confidentiality Policy and Procedures.

I acknowledge that violation of confidentiality laws and rules [and this Agency's HIV Confidentiality Policy 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 & PROTOCOL

Policy: Confidentiality Obligations Concerning Clients of Our HIV Services Program

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. [add HIPPA if applicable]

Each employee shall therefore:

1. be trained about, and sign a written attestation that he/she understands and will abide by, his/her obligations to protect the confidentiality of all HIV-related information concerning clients of [Agency's] HIV Services Program, in accordance with all applicable requirements of law; and
2. disclose no confidential HIV-related information about any client of the Agency unless the disclosure is in accordance with law.

Internal Communications (Need to Know) Protocol Concerning HIV-related Information About Clients

This protocol governs the circumstances in which [Agency] employees are authorized to have access to, and/or to disclose to other [Agency] employees, HIV-related information about any individual ("client") who has requested or received [describe services] from the [Agency's] HIV services program].

An [Agency] employee is authorized to have access to HIV-related information about a client, and/or to disclose such information about a client to another [Agency] employee, only in the following circumstances:

- (1) the job title of the employee receiving and/or disclosing the client's HIV-related information is included in the [Agency's] Need to Know list (below); and
- (2) the employee receiving and/or 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, Appendix F 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 legal or contractual confidentiality requirements, or of the [Agency's] HIV Confidentiality Policy and Procedures, 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 his/her 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/positions in developing the agency-specific Need to Know list]:

1. Agency [HIV program] directors & management:

[Agency/program managers with executive, administrative, management, supervisory, fiscal, reporting, quality improvement, etc. responsibilities requiring/involving access to personal HIV/health-related information about clients

2. Fiscal operations:

[Fiscal management and support staff with fiscal, billing/reimbursement, funding, reporting responsibilities requiring/involving access to personal HIV/health related information about clients.

3. Direct services:

[Positions responsible for direct provision or supervision of staff providing specified services to clients, or who participate in [program staff/team] discussions regarding clients' cases.

4. Client records & data:

[Positions with responsibilities involving collection, maintenance, filing, reporting of client records, documents and databases (written and electronic) requiring or involving access to records containing personal HIV/health information about clients

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

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

APPENDIX 6

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)

APPENDIX 7

New York State Department of Health
AIDS Institute

Authorization for Release of Health Information and Confidential HIV-Related Information*

This form authorizes release of health information including HIV-related information. You may choose to release only your non-HIV health information, only your HIV-related information, or both. Your information may be protected from disclosure by federal privacy law and state law. Confidential HIV-related information is any information indicating that a person has had an HIV-related test, or has HIV infection, HIV-related illness or AIDS, or any information that could indicate a person has been potentially exposed to HIV.

Under New York State Law HIV-related information can only be given to people you allow to have it by signing a written release. This information may also be released to the following: health providers caring for you or your exposed child; health officials when required by law; insurers to permit payment; persons involved in foster care or adoption; official correctional, probation and parole staff; emergency or health care staff who are accidentally exposed to your blood; or by special court order. Under New York State law, anyone who illegally discloses HIV-related information may be punished by a fine of up to \$5,000 and a jail term of up to one year. However, some re-disclosures of health and/or HIV-related information are not protected under federal law. For more information about HIV confidentiality, call the New York State Department of Health HIV Confidentiality Hotline at 1-800-962-5065; for more information regarding federal privacy protection, call the Office for Civil Rights at 1-800-368-1019. You may also contact the NYS Division of Human Rights at 1-888-392-3644.

By checking the boxes below and signing this form, health information and/or HIV-related information can be given to the people listed on page two (and on additional sheets if necessary) of the form, for the reason(s) listed. Upon your request, the facility or person disclosing your health information must provide you with a copy of this form.

- I consent to disclosure of (please check all that apply):
- My HIV-related information
 - My non-HIV health information
 - Both (non-HIV health and HIV-related information)

<p>Name and address of facility/person disclosing HIV-related information: _____ _____</p> <p>Name of person whose information will be released: _____</p> <p>Name and address of person signing this form (if other than above): _____ _____</p> <p>Relationship to person whose information will be released: _____ _____</p> <p>Describe information to be released: _____</p> <p>Reason for release of information: _____</p> <p>Time Period During Which Release of Information is Authorized: From: _____ To: _____</p> <p>Exceptions to the right to revoke consent, if any: _____ _____</p> <p>Description of the consequences, if any, of failing to consent to disclosure upon treatment, payment, enrollment, or eligibility for benefits (Note: Federal privacy regulations may restrict some consequences): _____ _____</p>
--

<p>Please sign below only if you wish to authorize all facilities/persons listed on pages 1,2 (and 3 if used) of this form to share information among and between themselves for the purpose of providing health care and services.</p> <p>Signature _____ Date _____</p>
--

*** This Authorization for Release of Health Information and Confidential HIV-Related Information form is HIPAA compliant. If releasing only non-HIV related health information, you may use this form or another HIPAA-compliant general health release form.**

**Authorization for Release of Health Information
and Confidential HIV-Related Information***

**Complete information for each facility/person to be given general information and/or HIV-related information.
Attach additional sheets as necessary. It is recommended that blank lines be crossed out prior to signing.**

Name and address of facility/person to be given general health and/or HIV-related information:

Reason for release, if other than stated on page 1:

If information to be disclosed to this facility/person is limited, please specify:

Name and address of facility/person to be given general health and/or HIV-related information:

Reason for release, if other than stated on page 1:

If information to be disclosed to this facility/person is limited, please specify:

The law protects you from HIV-related discrimination in housing, employment, health care and other services. For more information, call the New York City Commission on Human Rights at (212) 306-7500 or the NYS Division of Human Rights at 1-888-392-3644.

My questions about this form have been answered. I know that I do not have to allow release of my health and/or HIV-related information, and that I can change my mind at any time and revoke my authorization by writing the facility/person obtaining this release. I authorize the facility/person noted on page one to release health and/or HIV-related information of the person named on page one to the organizations/persons listed.

Signature _____ Date _____
(SUBJECT OF INFORMATION OR LEGALLY AUTHORIZED REPRESENTATIVE)

If legal representative, indicate relationship to subject:

Print Name _____

Client/Patient Number _____

*** This Authorization for Release of Health Information and Confidential HIV-Related Information form is HIPAA compliant. If releasing only non-HIV related health information, you may use this form or another HIPAA-compliant general health release form.**

**Authorization for Release of Health Information
and Confidential HIV-Related Information***

**Complete information for each facility/person to be given general information and/or HIV-related information.
Attach additional sheets as necessary. It is recommended that blank lines be crossed out prior to signing.**

Name and address of facility/person to be given general health and/or HIV-related information:

Reason for release, if other than stated on page 1:

If information to be disclosed to this facility/person is limited, please specify:

Name and address of facility/person to be given general health and/or HIV-related information:

Reason for release, if other than stated on page 1:

If information to be disclosed to this facility/person is limited, please specify:

Name and address of facility/person to be given general health and/or HIV-related information:

Reason for release, if other than stated on page 1:

If information to be disclosed to this facility/person is limited, please specify:

<p>If any/all of this page is completed, please sign below:</p> <p>Signature _____ Date _____ <small>(SUBJECT OF INFORMATION OR LEGALLY AUTHORIZED REPRESENTATIVE)</small></p> <p>Client/Patient Number _____</p>

*** This Authorization for Release of Health Information and Confidential HIV-Related Information form is HIPAA compliant. If releasing only non-HIV related health information, you may use this form or another HIPAA-compliant general health release form.**

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