

/\* NEW YORK statutes deal with home health care; testing; confidentiality; reporting; insurance; the AIDS Institute; an advisory panel on infected health care workers; prevention training; alcoholism and substance abuse; and health insurance continuation program. It is presented in two parts. \*/

### 19.01 Declaration of policy

The legislature declares the following:

Alcoholism, substance abuse and chemical dependence pose major health and social problems for individuals and their families when left untreated, including family devastation, homelessness, and unemployment. It has been proven that successful prevention and treatment can dramatically reduce costs to the health care, criminal justice and social welfare systems.

The tragic, cumulative and often fatal consequences of alcoholism and substance abuse are, however, preventable and treatable disabilities that require a coordinated and multi-faceted network of services.

The legislature recognizes locally planned and implemented prevention as a primary means to avert the onset of alcoholism and substance abuse. It is the policy of the state to promote comprehensive, age appropriate education for children and youth and stimulate public awareness of the risks associated with alcoholism and substance abuse. Further, the legislature acknowledges the need for a coordinated state policy for the establishment of prevention and treatment programs designed to address the problems of chemical dependency among youth, including prevention and intervention efforts in school and community-based programs designed to identify and refer high risk youth in need of chemical dependency services.

Substantial benefits can be gained through alcoholism and substance abuse treatment for both addicted individuals and their families. Positive treatment outcomes that may be generated through a complete continuum of care offer a cost effective and comprehensive approach to rehabilitating such individuals. The primary goals of the rehabilitation and recovery process are to restore social, family, lifestyle, vocational and economic supports by stabilizing an individual's physical and psychological functioning. The legislature recognizes the importance of varying treatment approaches and levels of care designed to meet each client's needs. Relapse prevention and aftercare are two primary components of treatment that serve to promote and maintain recovery.

The legislature recognizes that the distinct treatment needs of special populations, including women and women with children, persons with HIV infection, persons diagnosed with mental illness, persons who abuse chemicals, the homeless and veterans with post traumatic stress disorder, merit

particular attention. It is the intent of the legislature to promote effective interventions for such populations in need of 'particular attention. The legislature also recognizes the importance of family support for individuals in alcohol or substance abuse treatment and recovery. Such family participation can provide lasting support to the recovering individual to prevent relapse and maintain recovery. The intergenerational cycle of chemical dependency within families can be intercepted through appropriate interventions.

The state of New York and its local governments have a responsibility in coordinating the delivery of alcoholism and substance abuse services, through the entire network of service providers. To accomplish these objectives, the legislature declares that the establishment of a single, unified office of alcoholism and substance abuse services will provide an integrated framework to plan, oversee and regulate the state's prevention and treatment network. In recognition of the growing trends and incidence of chemical dependency, this consolidation allows the state to respond to the changing profile of chemical dependency. The legislature recognizes that some distinctions exist between the alcoholism and substance abuse field and where appropriate, those distinctions may be preserved. Accordingly, it is the intent of the state to establish one office of alcoholism and substance abuse services in furtherance of a comprehensive service delivery system.

#### 230-a. Infection control standards

Notwithstanding any law to the contrary, including section sixty-five hundred thirty-two of the education law, the department shall promulgate rules or regulations describing scientifically accepted barrier precautions and infection control practices as standards of professional medical conduct for persons licensed under articles one hundred thirty-one and one hundred thirty-one B of the education law. The department shall consult with the education department to ensure that regulatory standards for scientifically acceptable barrier precautions and infection prevention techniques promulgated pursuant to this section are consistent, as far as appropriate with such standards adopted by the education department applicable to persons licensed under the education law other than articles one hundred thirty-one and one hundred thirty-one B of such law.

#### 232 HIV prevention training

\*\*\*

4. To develop criteria for the selection of students eligible for health corps scholarships or fellowships under the provisions of section two hundred thirty-three of this title, including, but not limited to, the student's academic

achievement, previous work experience in their chosen health profession and a demonstrated interest in working with institutionalized populations or with persons infected with the human immunodeficiency virus (HIV) or who have acquired immunodeficiency syndrome (AIDS) or in a health care setting eligible pursuant to this title;

#### 238. Course work or training in infection control practices

Every physician, physician assistant and specialist assistant practicing in the state shall, on or before July first, nineteen hundred ninety-four and every four years thereafter, (a) complete course work or training, appropriate to the professional's practice, approved by the department regarding infection control and barrier precautions, including engineering and work practice controls, in accordance with regulatory standards promulgated by the department in consultation with the department of education, to prevent the transmission of HIV or HBV in the course of professional practice and (b) so document to the department, provided however, that physicians subject to the provisions of paragraph (f) of subdivision one of section twenty-eight hundred five k of this chapter shall not be required to report to the department. The department shall provide an exemption from this requirement to anyone who requests such an exemption and who (i) clearly demonstrates to the department's satisfaction that there would be no need for him or her to complete such course work or training because of the nature of his or her practice or (ii) that he or she has completed course work or training deemed by the department to be equivalent to the standards for course work or training approved by the department pursuant to this section. The department shall consult with organizations representative of professions, institutions and those with expertise in infection control and HIV and HBV with respect to the regulatory standards promulgated pursuant to this section.

#### 321. Medical information exchange centers

(a) Whenever any insurance company (which is a member of a medical information exchange center or which otherwise may transmit medical information in whatever manner to any other similar facility including but not limited to an electronic data facility used by two or more insurance companies to determine or aid in determining the insurability of applicants) requests medical information -from any applicant for personal insurance, it shall not transmit, nor be considered to have obtained the applicant's informed consent to transmit, the information to any such facility unless such company furnishes such applicant with a clear and conspicuous notice disclosing:

- (1) a description of such facility and its operations, including its name, address and telephone number where it may be contacted to request disclosure of any medical information transmitted to it;
  - (2) the circumstances under which such facility may release such medical information to other persons; and
  - (3) such applicant's rights to request such facility to arrange disclosure of the nature and substance of any information in its files pertaining to him, and to seek correction of any inaccuracies or incompleteness of such information.
- (b) Such notice shall be given to all applicants when any application for personal insurance is completed.
- (c) No such facility shall release, transmit or otherwise communicate any medical information it may have to any other person unless such other person shall have in its possession a written instrument signed by the person who is the subject of medical information (or by a parent or guardian if such subject is a minor) specifically naming such facility and authorizing such other person to obtain such medical information from such facility,
- (d) No such facility shall maintain information about HIV related test results pertaining to any individual unless such test results are included within a general code, which code is not designated solely for HIV related test results, and concerning which code no member of such facility may request from such facility details sufficient to determine whether the code was used to maintain information about HIV related test results.

For purposes of this subsection, an "HW related test" means any laboratory test or series of tests for any virus, antibody, antigen or etiologic agent whatsoever thought to cause or to indicate the presence of AIDS.

#### 367-e. Payment for AIDS home care programs

1. If an AIDS home care program as defined under article thirty-six of the public health law is provided in the social services district for which he has authority, the local social services official, before he authorizes care in a nursing home or intermediate care facility or before he authorizes home health services or personal care services for a person eligible to receive services under this title, shall notify the person in writing of the provisions of this section.
2. If a person eligible to receive services under the provisions of this title desires to remain and is deemed by his physician able to remain in his own home or the home of a responsible relative or other responsible adult if the necessary services are provided, such person or his representative shall so inform the local social services official. If an AIDS home care program as

defined under article thirty-six of the public health law is provided in the social services district for which he has authority, such official shall authorize an assessment under the provision of section three thousand six hundred sixteen of the public health law. If the results of the assessment indicate that the person can receive the appropriate level of care at home, the official shall prepare for that person a plan for the provision of services comparable to those that would be rendered in a hospital or residential health care facility, as appropriate for the patient. In developing such plan, the official shall consult with those persons performing the assessment and shall assure that such plan is appropriate to the patient's needs and will result in an efficient use of services. The services shall be provided by a long term home health care program authorized by the commissioner of health under article thirty-six of the public health law to provide an AIDS home care program.

3. The commissioner shall apply for any waivers, including home and community based services waivers pursuant to section nineteen hundred fifteen-c of the social security act, necessary to implement AIDS home care programs. Notwithstanding any inconsistent provision of law but subject to expenditure limitations of this section, the commissioner, subject to the approval of the state director of the budget, may authorize the utilization of medical assistance funds to pay for services provided by AIDS home care programs in addition to those services included in the medical assistance program under section three hundred sixty-five-a of this chapter, 50 long as federal financial participation is available for such services. Expenditures made under this subdivision shall be deemed payments for medical assistance for needy persons and shall be subject to reimbursement by the state in accordance with the provisions of section three hundred sixty-eight-a of this chapter.

4. No social services district shall make payment for a person receiving an AIDS home care program while payments are being made for that person for inpatient care in a residential health care facility or hospital.

5. The commissioner, together with the commissioner of health, shall submit a report to the governor, president pro tem of the senate and the speaker of the assembly by July first, nineteen hundred ninety and each subsequent year thereafter on the implementation of this section. Such report shall include a statement of the scope and status of the AIDS crisis in New York state, the development and implementation of the AIDS home care programs, the adequacy of care delivered by such programs, the extent to which such programs have affected use of institutional care services by AIDS patients, the costs associated with such programs, the adequacy of reimbursement provided such programs, any recommendations for legislative action and other such matters as may be pertinent.

6. This section shall be effective if, and as long as, federal financial participation is available.

### 367-f. Long term care security demonstration program for long term care

1. The commissioner, in consultation with the commissioner of health, the superintendent of insurance and the director of the state office for the aging and subject to the approval of the director of the budget, is authorized to establish a long term care security demonstration program for long term care. The commissioner may establish income and resources tests for eligibility for benefits under the program.
2. The commissioner shall apply for any necessary waivers pursuant to subdivision (2) of section 1915 of the federal social security act necessary to implement this section. Utilization of medical assistance funds to pay for care and services to persons pursuant to this section shall be provided so long as federal financial participation is available for such care and services.
3. Notwithstanding any inconsistent provision of law, the long term care security demonstration program established pursuant to subdivision one of this section may provide that a person whose income and resources exceed the limits provided in subdivision two of section three hundred sixty-six of this title may be eligible for long term care services under the medical assistance program in accordance with this subdivision if such person: (i) is covered by an insurance plan providing long term care services which meets the minimum benefit standards established pursuant to section three thousand two hundred twenty-nine of the insurance law and which is approved by the superintendent of insurance, in consultation with the commissioners of health and social services and the director of the state office for the aging, and (ii) has exhausted all coverage and benefits provided by such plan provided, however, that the commissioner may provide for assistance with deductibles prior to exhaustion of all coverage and benefits provided under such plan for persons eligible under this section. For the purposes of this section, long term care services shall include, but not be limited to, care, treatment, maintenance, and services provided in a residential health care facility qualified as a provider in the medicare program pursuant to title XVIII of the federal social security act or provided by a home care services agency, certified home health agency or long term home health care program, as defined in section thirty-six hundred two of the public health law or a personal care provider licensed or regulated by any other state or local agency. Provided further, however, the state shall not utilize any medical assistance funds to pay for any insurance plans providing long term care services to eligible persons pursuant to this section written five years after the effective date of this section. Medical assistance funds shall continue to be available for any existing insurance plans providing long term care services to eligible persons pursuant to this section regardless of whether the provisions of such section remain in effect.

4. Notwithstanding any inconsistent provision of law, rates of payment under the medical assistance program for long term care services after the exhaustion of all coverage and benefits provided by an insurance plan described in subdivision two of this section shall be reduced in accordance with regulations of the department, promulgated in consultation with the commissioner of health and the director of the state office for the aging, by an amount which the provider of such long term care services may charge the eligible individual.

5. No demonstration program authorized by this section shall be undertaken unless the commissioner reasonably estimates that the aggregate state expenditures under the program would be less than without the program and the director of the budget approves such program.

6. The department shall submit an annual report no later than January first of each year beginning January first, nineteen hundred ninety-one. Such report shall include a description and the number of policies issued and an analysis of the cost effectiveness of the program authorized pursuant to this section.

367-o. Instruments for home care assessment [Eff. until July 1, 1994.]

1. The commissioner and the commissioner of health, shall establish and may periodically revise instruments for home care Screening, referral, assessment, eligibility determination, and discharge, which shall be used by certified home health agencies, Providers of long term home health care programs, providers of AIDS home care programs, providers of private duty nursing, and Providers of personal care services to determine a recipient's eligibility for and the nature and amount of such services to be provided to the recipient. Such instrument shall:

(a) allow for use by hospital discharge planners that portion of the instrument necessary to direct a hospitalized recipient into the home care program which is expected to meet their assessed needs most appropriately and cost-effectively; and to the extent possible and appropriate, direct

(i) to a certified home health agency recipients who require therapeutic and/or skilled services and/or require clinical management;

(ii) to a long term home health care program, if such program is available in their area, recipients who are expected to require care over an extended period and whose condition meets criteria for medical eligibility in a residential health care facility, whose condition requires services beyond care and nurse monitoring, or whose condition is determined to be medically unstable;

(iii) to a personal care services program recipients whose condition is determined to be medically stable; and

(iv) to a hospice available within their area recipients for whom it is not medically contraindicated and if desired by the recipient;

(b) assess the patient's characteristics and service needs, including health, social and environmental needs and whether home care services are appropriate and can be safely provided to the recipient, and shall be used to refer recipients to the home care program which most appropriately and cost effectively meets their needs, or other long term care service which is deemed appropriate for the recipient;

(c) confirm the recipient's eligibility for the program to which the recipient has been referred or direct the recipient to the home care program which most appropriately and cost- effectively meets his or her needs;

(d) consider factors that include but are not limited to the following: the recipient's ability to perform activities of daily living, the recipient's mental and physical ability to direct his or her own care and to summon assistance, the recipient's health and rehabilitation needs, as well as the availability, willingness and ability of others to provide care. When it is determined that the recipient is not physically or mentally able to direct their own care or to summon assistance, the instrument shall consider whether the recipient has someone who is available, able and willing to make decisions on behalf of the recipient;

(e) specify the maximum number of hours per month, or the equivalent thereof, which will be paid for under the medical assistance program provided, however that the recipient's health and safety will not be jeopardized;

(f) serve as a basis for the plan of care and consider the relationship between all the services provided by the home care providers to which the recipient is referred, all other home care services available in the area as defined in this subdivision, the availability of informal supports to provide care, the sources of support suggested by the recipient or the recipient's representative and potential for medicare coverage of recipient care needs;

(g) not apply to a recipient requiring care for sixty continuous days or less; and

(h) be used directly by certified home health agencies, long term home health care programs, or, if personal care services are appropriate. by the social services district or its designee, which may include an agency under contract with the social services district to provide personal care services or a certified home health agency, under conditions specified by the department

2. The instruments established, or revised, pursuant to subdivision one of this section shall be employed for the following categories of recipients and such services shall not be authorized for more than the maximum hours of service per month, or the equivalent thereof, per recipient, based on such instrument regardless of the number of monthly service hours, or their equivalent, if any, currently authorized for a recipient:

(a) recipients who initially are authorized for such services on or after July first, nineteen hundred ninety-two;

(b) all recipients, upon the periodic reassessment of their care plan; and

(c) recipients who currently receive more than one hundred fifty-six hours, or its equivalent, of such services per month; provided, however, that the department shall require the reassessment of such recipients utilizing the instrument; notify such recipients of the required reassessment, as determined by the department; and limit payments for such services to the equivalent of one hundred fifty-six hours per month for those recipients who fail to comply with such reassessment requirement until such recipients are reassessed provided, however, the recipients' health and safety is not jeopardized.

3. Notwithstanding subdivision two of this section, any maximum hours per month limitations imposed as a result of use of the assessment instrument shall not apply with respect to recipients of long term home health care program services.

4. The provisions of this section shall not apply to individuals receiving services authorized under subdivisions six and seven of section three hundred sixty-six of this chapter.

## TITLE 11-B HEALTH INSURANCE CONTINUATION PROGRAM-FOR PERSONS WITH AIDS

### Section

369-k. Definitions.

369-l. Establishment of program.

369-m. Program eligibility and operations.

369-n. Relationship of program to medical assistance program.

369-k. Definitions

As used in this section:

1. "Health insurance" shall mean insurance or an employee benefit plan against sickness, ailment or bodily injury of the employee and, if covered, his or her dependents, other than (i) insurance or an employee benefit plan providing disability benefits; or (ii) medical assistance benefits received under title eleven of this article.
2. "Health insurance costs" means the premiums or contributions paid for health insurance by or on behalf of a person with AIDS.
3. "Household" means the person with AIDS and all other persons residing in the same dwelling for whom such person would be responsible pursuant to section one hundred one of this chapter, or for whom such person has assumed responsibility.
4. "Persons with AIDS" means persons who are diagnosed as having acquired immune deficiency syndrome (AIDS) or who have human immunodeficiency virus (HIV)-related illness, as defined in regulation by the state department of health.
5. "Poverty line" means the federal income official poverty line (as defined and annually revised by the federal office of management and budget).
6. "Program" means the health insurance continuation program for persons with AIDS established by section three hundred sixty-nine-l of this article.

#### 369-1. Establishment of program

1. There is hereby established within the department of social services the health insurance continuation program for persons with AIDS.
2. Notwithstanding any inconsistent provision of law, the commissioner, subject to the approval of the director of the budget, may apply for appropriate waivers under federal law and regulation or take other actions to secure federal financial participation in the costs of the program; may waive or modify any provisions of this chapter or regulation of the department to implement this title; or may promulgate such regulations as necessary to implement this title.

#### 369-m. Program eligibility and operations

1. In accordance with regulations of the commissioner, a social services district shall pay all or part of the health insurance costs on behalf of a

person with AIDS who:

- (a) is unemployed, or, if employed, currently is ineligible to participate in health insurance through his or her current employer or such employer offers no such plan; and
- (b) participated in the plan of health insurance provided by his or her prior employer and is eligible to continue or convert his or her participation in such plan by assuming the health insurance costs associated with such plan although no longer employed by such employer; and
- (c) resides in a household whose household income is less than or equal to one hundred eighty-five percent of the poverty line.

2. For purposes of determining eligibility under this title, household income shall be determined by use of the same methodology used to determine eligibility for federal supplemental security income benefits, provided that costs incurred for medical or remedial care shall not be taken into account in determining household income; and, provided further, that any resources available to such household shall not be considered nor required to be applied to the payment of health care expenses.

#### 369-n. Relationship of program to medical assistance program

1. Any person eligible for medical assistance benefits under title eleven of this article or who would be eligible for such benefits if an application were to be made pursuant to section three hundred sixty-six of this article shall not be eligible for the payment of all or part of such person's health insurance costs under this program. If all members of a household can establish eligibility for medical assistance benefits under the excess income program by use of paid or incurred bills, no person in that household shall be eligible for the payment of all or part of such person's health insurance costs under this program.

2. Notwithstanding any inconsistent provision of law, expenditures incurred by social services districts under this title related to program expenses shall be considered expenditures under the program of medical assistance for needy persons under title eleven of this article and there shall be paid to each such district fifty percent of the amount expended by such district under this title, and for the administration thereof, after first deducting therefrom any federal funds properly received or to be received on account thereof.

## 2611. HIV written Informed consent

(a) No insurer or its designee shall request or require an individual proposed for insurance coverage to be the subject of an HIV related test without receiving the written informed consent of such individual prior to such testing and without providing general information about AIDS and the transmission of HIV infection.

(b) Written informed consent to an HIV related test shall consist of a written authorization that is dated and includes at least the following:

(1) a general description of the test;

(2) a statement of the purpose of the test;

(3) a statement that a positive test result is an indication that the individual may develop AIDS and may wish to consider further independent testing;

(4) a statement that the individual may identify on the authorization form the person to whom the specific test results may be disclosed in the event of an adverse underwriting decision, which person may be the individual or a physician or other designee at the discretion of the individual proposed for insurance;

(5) the department of health's statewide toll-free telephone number that may be called for further information about AIDS, the meaning of HIV related test results, and the availability and location of HIV related counseling services; and

(6) the signature of the applicant or individual proposed for insurance, or if such individual lacks capacity to consent, the signature of such other person authorized to consent for such individual.

(c) In the event that an insurer's adverse underwriting decision is based in whole or in part on the result of an HIV related test, the insurer shall notify the individual of the adverse underwriting decision and ask the individual to elect in writing, unless the individual has already done so, whether to have the specific HIV related test results disclosed directly to the individual or to such other person as the individual may designate. If the individual elects to receive the HIV related test results directly, the insurer shall advise the individual that he or she may call the department of health's statewide toll-free telephone number for further information about AIDS, the meaning of HIV related test results, and the availability and location of HIV related counseling services and shall also advise such individual to consult with a physician about the meaning of and need for counseling, where appropriate, as to the HIV related test results.

(d) As used in this section, the following terms shall have the following

meanings:

- (1) "Adverse underwriting decision" means:
  - (A) a declination of insurance coverage as applied for; or
  - (B) an offer to issue insurance coverage at a higher than standard rate.
- (2) "AIDS" means acquired immune deficiency syndrome, as may be defined from time to time by the centers for disease control of the United States public health service.
- (3) "HIV infection" means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.
- (4) "HIV related test" means any laboratory test or series of tests for any virus, antibody, antigen or etiologic agent whatsoever thought to cause or to indicate the presence of AIDS.
- (e) Any person who violates this section shall be subject to the provisions of article twenty-four of this chapter.
- (f) Nothing in this section shall be construed to create, impair, alter, limit, modify, enlarge, abrogate or restrict the specific authority of the department to allow or prohibit the use of HIV related tests or the consideration of HIV related test results for insurance coverage purposes.

#### ARTICLE 27-DD---STATE ADVISORY PANEL ON HIV/HBV INFECTED HEALTH CARE WORKERS

2760. Advisory panel established.

1. A state advisory panel for the evaluation of health care workers with human immunodeficiency virus (HIV) or hepatitis B (HBV) (hereinafter referred to in this article as HIV/HBV) is hereby established in the department. This panel shall be known as the health care worker HIV / HBV advisory panel and shall be composed of three to five members. The commissioner shall appoint three members for the term of two years: a state or local public health officer, an infectious disease expert and an expert in infection control or epidemiology. For the purpose of the panel's deliberations on a specific case: (a) the commissioner may appoint a health professional with expertise relevant to procedures performed by the health care worker, provided, however, that the commissioner shall appoint such professional if the health care worker so requests; and (b) the commissioner shall, at the health care worker's request, appoint the health care worker's personal physician. The commissioner shall appoint the chairperson of the panel. A vacancy

occurring during a term shall be filled by appointment by the commissioner for the unexpired term. Any member may be removed from the panel at the pleasure of the commissioner.

2. Each member of the panel shall receive up to one hundred fifty dollars as prescribed by the commissioner for each day devoted to panel work not to exceed forty-five hundred dollars in any one year, and shall be reimbursed for actual and necessary expenses incurred in the performance of his/her duties.

3. The department shall advise the panel members of statutory and regulatory confidentiality provisions and restrictions on disclosure of information which are applicable to the panel members and to panel operations.

#### 2761. Function, powers and duties

1. The health care worker HIV/HBV advisory panel shall only evaluate and advise an HIV/HBV infected health care worker who voluntarily seeks the panel's review of the risk of HIV/HBV transmission to others through his/her workplace practice. Prior to the panel's evaluation of the worker, the panel must, fully advise the worker of the panel's authority to investigate, to recommend practice restrictions or modifications, to advise facilities of such restrictions and to refer cases to professional licensing, registration and certification boards. If the health care worker is affiliated with or employed at a facility licensed by the department, the panel may evaluate and advise the worker only after such facility has completed its review of the scope of practice of the worker. This institutional review may be conducted through the facility's existing quality assurance program as required under section twenty-eight hundred five-j of this chapter, and need not require the creation of a separate facility HIV/HBV panel. Notwithstanding any other provision of law, rule or regulation, the panel may request and shall be entitled to receive patient records and other documents or information reasonably necessary for and relevant to the panel's deliberations and implementation of this article including information and reports available to the department under section twenty-eight hundred five-m of this chapter, provided that the panel may only request records with patient names if essential to the panel's complete review of the case and provided further that employees of the department, other than the panel, shall redact patient names before panel review of such records. Any such information and reports provided to the panel that are subject to section two thousand eight hundred five-m of this chapter shall remain subject to the limitations on disclosure provided by such section. The panel may seek the advice of professionals with relevant expertise. The panel shall give the health care worker an opportunity to meet with the panel. The health care worker may be accompanied by a union or other representative at such meeting. Only when evidence indicates that the

health care worker's practice poses a significant risk of harm to patients, the panel shall appropriate recommendations that are at least restrictive with respect to the health care worker's practice including, but not limited to, training or monitoring, or, if necessary, reassignment or practice restrictions.

2. The panel shall evaluate an HIV/HBV infected health care worker pursuant to comprehensive medical criteria, including:

(a) physical or mental condition that interferes with or is significantly likely to interfere with the worker's ability to perform assigned tasks or regular duties;

(b) lack of compliance with established guidelines to prevent transmission of disease and/or documentation or evidence of previous transmission of bloodborne pathogens;

(c) the appropriateness of techniques as related to performance of procedures; and

(d) any health condition that would pose a significant risk to others.

3. When the panel recommends training, monitoring, reassignment, any similar action, or practice restrictions, the health care worker shall provide written assurance to the panel that he/she has informed facilities licensed by the department where the worker provides patient care of the panel's recommendations and shall identify the person or persons at the facilities so informed. If the health care worker fails to inform facilities licensed by the department where he/she provides patient care of the panel's recommendations, the panel shall so notify such facilities. If the health care worker fails to comply with the panel's recommendations or compliance cannot be determined by the panel after reasonable effort, the panel shall disclose the nature of its recommendations to the professional licensing, registration or certification boards relevant to the health care worker. The panel may periodically monitor and reevaluate the worker, with the worker's consent, at a frequency and through a mechanism to be determined by agreement between the worker and the panel.

4. The information received by the panel, the record of deliberations of the panel, and the decisions of the panel are not disclosable pursuant to article six of the public officers law. If the health care worker fails to comply with the recommendations of the panel or compliance cannot be determined by the panel after reasonable effort, information held by the panel, the panel's deliberations and recommendations may be disclosed to and utilized by the office of professional medical conduct, the office of professional discipline and appropriate disciplinary bodies. The meetings of the panel are not subject to article seven of the public officers law. The members of the panel are bound by article six-A of the public officers law (personal privacy protection law).

5. A health care worker's petition to the panel shall not prevent or preclude the worker from seeking relief in any other forum at any time.
6. The commissioner may promulgate regulations implementing this article.

## ARTICLE 27-THE ACQUIRED IMMUNE DEFICIENCY SYNDROME INSTITUTE

### 2775. The acquired immune deficiency syndrome institute

1. There is hereby established within the department of health the acquired immune deficiency syndrome institute. The institute shall have the central responsibility for administering the provisions of this article and otherwise coordinating the state's policies with respect to acquired immune deficiency syndrome.
2. The commissioner shall appoint a director of the institute and may assign such personnel within the amounts appropriated as is necessary to carry out the provisions of this article.

### 2776. Powers and duties

1. The institute shall have the following powers and duties:
  - (a) to develop and promote scientific investigations into the cause, prevention, methods of treatment, and cure of the acquired diseases of immunosuppression;
  - (b) to develop and promote programs of professional education and training and improvements in instrumentation as necessary adjuncts to such scientific investigations;
  - (c) to develop and maintain a clearing house within the department for information collected on acquired immune deficiency syndrome, including a catalogue of the existing medical literature and the results of existing epidemiological studies;
  - (d) to develop and promote an outreach campaign directed toward targeted high risk populations to provide coordinated information regarding the treatment and counseling programs and sources of financial assistance available; and
  - (e) to promote the availability of supportive services for affected persons.
2. Personal data in any investigations, reports and information relating thereto shall be kept confidential and be afforded all of the protections

provided by the provisions of paragraph (j) of subdivision one of section two hundred six of the public health law. The institute may, however, from time to time publish analyses of such scientific investigations in such a manner as to assure that the identities of the individuals concerned cannot be ascertained.

#### 2777. Research council

1. There shall be established within the institute a research council composed of seven members to be appointed by the commissioner. The members shall be representative of recognized centers engaged in the scientific investigation of acquired immunosuppressive diseases.
2. The research council shall be responsible for making recommendations to the institute for the purpose of carrying out the provisions of paragraphs (a) and (b) of subdivision one of section twenty-seven hundred seventy-six of this article.
3. The council shall meet at least four times a year. Special meetings may be called by the chairman, and shall be called by him at the request of the commissioner.
4. The members of the council shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder.

### ARTICLE 27-THE ACQUIRED IMMUNE DEFICIENCY SYNDROME INSTITUTE

#### Z778. Advisory council

1. There shall be established within the institute an advisory council composed of seventeen members who shall be appointed in the following manner: three shall be appointed by the temporary president of the senate and one by the minority leader of the senate; three shall be appointed by the speaker of the assembly and one by the minority leader of the assembly; nine shall be appointed by the governor. The governor shall designate the chairman of the advisory council. The members of the council shall be representative of the public, educational and medical institutions, local health departments and nonprofit organizations, including organizations providing services to high risk populations.

#### 2778. Advisory council

1. There shall be established within the institute an advisory council

composed of thirteen members who shall be appointed in the following manner: two shall be appointed by the temporary president of the senate and one by the minority leader of the senate; two shall be appointed by the speaker of the assembly and one by the minority leader of the assembly; seven shall be appointed by the governor. The governor shall designate the chairman of the advisory council. The members of the council shall be representative of the public, educational and medical institutions, local health departments and nonprofit organizations, including organizations providing services to high risk populations.

2. The advisory council shall be responsible for advising the commissioner with respect to the implementation of this article and shall make recommendations to the institute for the purpose of carrying out the provisions of paragraphs (c), (d) and (e) of subdivision one of section twenty-seven hundred seventy-six hereof.

3. The council shall meet at least four times a year. Special meetings may be called by the chairman, and shall be called by him at the request of the commissioner.

4. The members of the council shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder.

#### 2779. Reports by the commissioner

The commissioner shall make a first preliminary report to the governor and the legislature of its findings, conclusions, and recommendations not later than December first, nineteen hundred eighty-three, a second preliminary report of its findings, conclusions and recommendations not later than March first, nineteen hundred eighty-four and a final report of its findings, conclusions and recommendations not later than March first, nineteen hundred eighty-five, and shall submit with its reports such legislative proposals as it deems necessary to implement its recommendations.

#### 2805-d. Limitation of medical, dental or podiatric malpractice action based on lack of informed consent

1. Lack of informed consent means the failure of the person providing the professional treatment or diagnosis to disclose to the patient such alternatives thereto and the reasonably foreseeable risks and benefits involved as a reasonable medical, dental or podiatric practitioner under similar circumstances would have disclosed, in a manner permitting the patient to make a knowledgeable evaluation.

2. The right of action to recover for medical, dental or podiatric malpractice based on a lack of informed consent is limited to those cases involving either (a) nonemergency treatment, procedure or surgery, or (b) a diagnostic procedure which involved invasion or disruption of the integrity of the body.

3. For a cause of action therefor it must also be established that a reasonably prudent person in the patient's position would not have undergone the treatment or diagnosis if he had been fully informed and that the lack of informed consent is a proximate cause of the injury or condition for which recovery is sought.

4. It shall be a defense to any action for medical, dental or podiatric malpractice based upon an alleged failure to obtain such an informed consent that:

(a) the risk not disclosed is too commonly known to warrant disclosure; or

(b) the patient assured the medical, dental or podiatric practitioner he would undergo the treatment, procedure or diagnosis regardless of the risk involved, or the patient assured the medical, dental or podiatric practitioner that he did not want to be informed of the matters to which he would be entitled to be informed; or

(c) consent by or on behalf of the patient was not reasonably possible; or

(d) the medical, dental or podiatric practitioner, after considering all of the attendant facts and circumstances, used reasonable discretion as to the manner and extent to which such alternatives or risks were disclosed to the patient because he reasonably believed that the manner and extent of such disclosure could reasonably be expected to adversely and substantially affect the patient's condition.

## ARTICLE 27-F-HIV AND AIDS RELATED INFORMATION

### 2780. Definitions

As used in this article, the following terms shall have the following meanings:

1. "AIDS" means acquired immune deficiency syndrome, as may be defined from time to time by the centers for disease control of the United States public health service.

2. "HIV infection" means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

3. "HIV related illness" means any illness that may result from or may be

associated with HIV infection.

4. "HIV related test" means any laboratory test or series of tests for any virus, antibody, antigen or etiologic agent whatsoever thought to cause or to indicate the presence of AIDS.

5. "Capacity to consent" means an individual's ability, determined without regard to the individual's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment, or procedure, or of a proposed disclosure of confidential HIV related information, as the case may be, and to make an informed decision concerning the service, treatment, procedure or disclosure.

6. "Protected individual" means a person who is the subject of an HIV related test or who has been diagnosed as having HIV infection, AIDS or HIV related illness.

7. "Confidential HIV related information" means any information, in the possession of a person who provides one or more health or social services or who obtains the information pursuant to a release of confidential HIV related information, concerning whether an individual has been the subject of an HIV related test, or has HIV infection, HIV related illness or AIDS, or information which identifies or reasonably could identify an individual as having one or more of such conditions, including information pertaining to such individual's contacts.

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 twelve-B of the executive law; correctional services, 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.

9. "Release of confidential HIV related information" means a written authorization for disclosure of confidential HIV related information which is signed by the protected individual, or if the protected individual lacks capacity to consent, a person authorized pursuant to law to consent to health care for the individual. Such release shall be dated and shall specify to whom disclosure is authorized, the purpose for such disclosure and the time

period during which the release is to be effective. A general authorization for the release of medical or other information shall not be construed as a release of confidential HIV related information, unless such authorization specifically indicates its dual purpose as a general authorization and an authorization for the release of confidential HIV related information and complies with the requirements of this subdivision.

10. "Contact" means an identified spouse or sex partner of the protected individual or a person identified as having shared hypodermic needles or syringes with the protected individual.

11. "Person" includes any natural person, partnership, association, joint venture, trust, public or private corporation, or state or local government agency.

12. "Health facility" means a hospital as defined in section two thousand eight hundred one of this chapter, blood bank, blood center, sperm bank, organ or tissue bank, clinical laboratory, or facility providing care or treatment to persons with a mental disability as defined in article one of the mental hygiene law.

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.

14. "Child" means any protected individual actually or apparently under eighteen years of age.

15. "Authorized agency" means any agency defined by section three hundred seventy-one of the social services law and, for the purposes of this article, shall include such corporations incorporated or organized under the laws of the state as may be specifically authorized by their certificates of incorporation to receive children for the purposes of adoption or foster care.

16. "Insurance institution" means any corporation, association, partnership, reciprocal exchange, interinsurer, fraternal benefits society, agent, broker or other entity including, but not limited to, any health maintenance organization, medical service plan, or hospital plan which: (a) is engaged in the business of insurance; (b) provides health services coverage plans; or (c) provides benefits under, administers, or provides services for, an employee welfare benefit plan as defined in 29 U.S.C. 1002(1).

17. "Insurance support organization" means any person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the

information to an insurance institution for insurance transactions, including: (a) the furnishing of consumer reports or investigative consumer reports to an insurance institution for use in connection with an insurance transaction; or (b) the collection of personal information from insurance institutions or other insurance support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity. The following persons shall not be considered "insurance support organizations" for the purposes of this article: government institutions, insurance institutions, health facilities and health care providers.

### 2781. HIV related testing

1. Except as provided in section three thousand one hundred twenty-one of the civil practice law and rules, or unless otherwise specifically authorized or required. by a state or federal law, no person shall order the performance of an HIV related test without first receiving the written, informed consent of the subject of tile test who has capacity to consent or, when the subject lacks capacity to consent, of a person authorized pursuant to law to consent to health care for such individual. A physician or other person authorized pursuant to law to order the performance of an HIV related test shall certify, in the order for the performance of an HIV related test, that informed consent required by this section has been received prior to ordering such test by a laboratory or other facility.

2. Informed consent to an HIV related test shall consist of a statement signed by the subject of the test who has capacity to consent or, when the subject lacks capacity to consent, by a person authorized pursuant to law to consent to health care for the subject which includes at least the following:

(a) an explanation of the test, including its purpose, the meaning of its results, and the benefits of early diagnosis and medical intervention; and

(b) an explanation of the procedures to be followed, including that the test is voluntary, that consent may be withdrawn at any time, and a statement advising the subject that anonymous testing is available; and

(c) an explanation of the confidentiality protections afforded confidential HIV related information under this article, including the circumstances under which and classes of persons to whom disclosure of such information may be required, authorized or permitted under this article or in accordance with other provisions of law or regulation.

3. Prior to the execution of a written informed consent, a person ordering the performance of an HIV related test shall provide to the subject of an HIV related test or, If the subject lacks capacity to consent, to a person

authorized pursuant to law to consent to health care for the subject, an explanation of the nature of AIDS and HIV related illness, information about discrimination problems that disclosure of the test result could cause and legal protections against such discrimination, and information about behavior known to pose risks for transmission and contraction of HIV infection.

4. A person authorized pursuant to law to order the performance of an HIV related test shall provide to the person seeking such test an opportunity to remain anonymous and to provide written, informed consent through use of a coded system with no linking of individual identity to the test request or results. A health care provider who is not authorized by the commissioner to provide HIV related tests on an anonymous basis shall refer a person who requests an anonymous test to a test site which does provide anonymous testing. The provisions of this subdivision shall not apply to a health care provider ordering the performance of an HIV related test on an individual proposed for insurance coverage.

5. At the time of communicating the test result to the subject of the test, a person ordering the performance of an HIV related test shall provide the subject of the test or, if the subject lacks capacity to consent, the person authorized pursuant to law to consent to health care for the subject with counseling or referrals for counseling: (a) for coping with the emotional consequences of learning the result; (b) regarding the discrimination problems that disclosure of the result could cause; (c) for behavior change to prevent transmission or contraction of HIV infection; (d) to inform such person of available medical treatments; and (e) regarding the test subject's need to notify his or her contacts.

6. The provisions of this section shall not apply to the performance of an HIV related test

(a) by a health care provider or health facility in relation to the procuring, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, or other body fluids, for use in medical research or therapy, or for transplantation to individuals provided, however, that where the test results are communicated to the subject, post-test counseling, as described in subdivision five of this section, shall nonetheless be required; or

(b) for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher; or

(c) in a deceased person, when such test is conducted to determine the cause of death or for epidemiological purposes.

## 2782. Confidentiality and disclosure

1. No person who obtains confidential HIV related information in the course of providing any health or social service or pursuant to a release of confidential HIV related information may disclose or be compelled to disclose such information, except to the following:

(a) the protected individual or, when the protected individual lacks capacity to consent, a person authorized pursuant to law to consent to health care for the individual;

(b) any person to whom disclosure is authorized pursuant to a release of confidential HIV related information;

(c) an agent or employee of a health facility or health care provider if (1) the agent or employee is permitted to access medical records, (2) the health facility or health care provider itself is authorized to obtain the HIV related information, and (3) the agent or employee provides health care to the protected individual, or maintains or processes medical records for billing or reimbursement;

(d) a health care provider or health facility when knowledge of the HIV related information is necessary to provide appropriate care or treatment to the protected individual or a child of the individual;

(e) a health facility or health care provider, in relation to the procurement, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, or other body fluids, for use in medical education, research, therapy, or for transplantation to individuals;

(f) health facility staff committees or accreditation or oversight review organizations authorized to access medical records; provided that such committees or organizations may only disclose confidential HIV related information: (1) back to the facility or provider of a health or social service; (2) to carry out the monitoring, evaluation, or service review for which it was obtained; or (3) to a federal state or local government agency for the purposes of and subject to the conditions provided in subdivision six of this section;

(g) a federal, state, county or local health officer when such disclosure is mandated by federal or state law;

(h) an authorized agency in connection with foster care or adoption of a child. Such agency shall be authorized to redisclose such information only pursuant to this article or in accordance with the provisions of section three hundred seventy-three-a of the social services law;

(i) third party reimbursers or their agents to the extent necessary to

reimburse health care providers for health services; provided that, where necessary, an otherwise appropriate authorization for such disclosure has been secured by the provider;

(j) an insurance institution, for other than the purpose set forth in paragraph (i) of this subdivision, provided the insurance institution secures a dated and written authorization that indicates that health care providers, health facilities, insurance institutions, and other persons are authorized to disclose information about the protected individual, the nature of the information to be disclosed, the purposes for which the information is to be disclosed and which is signed by: (1) the protected individual; (2) if the protected individual lacks the capacity to consent, such other person authorized pursuant to law to consent for such individual; or (3) if the protected individual is deceased, the beneficiary or claimant for benefits under an insurance policy, a health services plan, or an employee welfare benefit plan as defined in 29 U.S.C. 1002(1), covering such protected individual;

(k) any person to whom disclosure is ordered by a court of competent jurisdiction pursuant to section twenty-seven hundred eighty-five of this article;

(l) an employee or agent of the division of parole, in accordance with paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, to the extent the employee or agent is authorized to access records containing such information in order to, carry out the division's functions, powers and duties with respect to the protected individual, pursuant to section two hundred fifty-nine-a of the executive law;

(m) an employee or agent of the division of probation and correctional alternatives or any local probation department, in accordance with paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, to the extent the employee or agent is authorized to access records containing such information in order to carry out the division's or department's functions, powers and duties with respect to the protected individual, pursuant to articles twelve and twelve-A of the executive law;

(n) a medical director of a local correctional facility as defined in section forty of the correction law, in accordance with paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, to the extent the medical director is authorized to access records containing such information in order to carry out his or her functions, powers and duties with respect to the protected individual; or

(o) an employee or agent of the commission of correction, in accordance with paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, to the extent the employee or agent is authorized to access records containing such information in order to carry out the

commission's functions, powers and duties with respect to the protected individual, pursuant to article three of the correction law.

(p) a law guardian, appointed to represent a minor pursuant to the social services law or the family court act, with respect to confidential HIV related information relating to the minor and for the purpose of representing the minor. If the minor has the capacity to consent, the law guardian may, not redisclose confidential HIV related information without the minor's permission. If the minor lacks capacity to consent, the law guardian may redisclose confidential HIV related information for the sole purpose of representing the minor. This paragraph shall not limit a law guardian's ability to seek relief under section twenty-seven hundred eighty-five of this chapter.

2. A state, county or local health officer may disclose confidential HIV related information when:

(a) disclosure is specifically authorized or required by federal or state law; or

(b) disclosure is made pursuant to a release of confidential HIV related information; or

(c) disclosure is requested by a physician pursuant to subdivision four of this section; or

(d) disclosure is authorized by court order pursuant to the provisions of section twenty-seven hundred eighty-five of this article.

3. No person to whom confidential HIV related information has been disclosed pursuant to this article shall disclose the information to another person except as authorized by this article, provided, however, that the provisions of this subdivision shall not apply:

(a) to the protected individual; or

(b) to a natural person who is authorized pursuant to law to consent to health care for the protected individual; or

(c) to a protected individual's foster parent as defined in section three hundred seventy-one of the social services law and subject to regulations promulgated pursuant to paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, for the purpose of providing care, treatment or supervision of the protected individual; or

(d) a prospective adoptive parent as specified in section three hundred seventy-three-a of the social services law and subject to regulations promulgated pursuant to paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article with whom a child has been placed for adoption.

4. (a) A physician may disclose confidential HIV related information wider the following conditions:

(1) disclosure is made to a contact or to a public health officer for the purpose of making the disclosure to said contact; and

(2) the physician reasonably believes disclosure is medically appropriate and there is a significant risk of infection to the contact; and

(3) the physician has counseled the protected individual regarding the need to notify the contact, and the physician reasonably believes the protected individual will not inform the contact; and

(4) the physician has informed the protected individual of his or her intent to make such disclosure to a contact and has given the protected individual the opportunity to express a preference as to whether disclosure should be made by the physician directly or to a public health officer for the purpose of said disclosure. If the protected individual expresses a preference for disclosure by a public health officer or by the physician, the physician shall honor such preference.

(b) When making such disclosures to the contact, the physician or public health officer shall provide or make referrals for the provision of the appropriate medical advice and counseling for coping with the emotional consequences of learning the information and for changing behavior to prevent transmission or contraction of HIV infection. The physician or public health officer shall not disclose the identity of the protected individual or the identity of any other contact. A physician or public health officer making a notification pursuant to this subdivision shall make such disclosure in person, except where circumstances reasonably prevent doing so.

(c) A physician or public health officer shall have no obligation to identify or locate any contact.

(d) A physician may, upon the consent of a parent or guardian, disclose confidential HIV related information to a state, county, or local health officer for the purpose of reviewing the medical history of a child to determine the fitness of the child to attend school.

(e) A physician may disclose confidential HIV related information pertaining to a protected individual to a person (known to the physician) authorized pursuant to law to consent to health care for a protected individual when the physician reasonably believes that: (1) disclosure is medically necessary in order to provide timely care and treatment for the protected individual; and (2) after appropriate counseling as to the need for such disclosure, the protected individual will not inform a person authorized by law to consent to health care; provided, however, that the physician shall not make such disclosure if, in the judgment of the physician: (A) the

disclosure would not be in the best interest of the protected individual; or (B) the protected individual is authorized pursuant to law to consent to such care and treatment. Any decision or action by a physician under this paragraph, and the basis therefor, shall be recorded in the protected individual's medical record.

5. (a) whenever disclosure of confidential HIV related information is made pursuant to this article, except for disclosures made pursuant to paragraph (a) of subdivision one of this section or paragraph (a) or (e) of subdivision four of this section, such disclosure shall be accompanied or followed by a statement in writing which includes the following or substantially similar language: "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." An oral disclosure shall be accompanied or followed by such a notice within ten days.

(b) Except for disclosures made pursuant to paragraph (c) of subdivision one of this section, or to persons reviewing information or records in the ordinary course of ensuring that a health facility is in compliance with applicable quality of care standards or any other authorized program evaluation, program monitoring or service review, or to governmental agents requiring information necessary for payments to be made on behalf of patients or clients pursuant to contract or in accordance to law, a notation of all such disclosures shall be placed in the medical record of a protected individual, who shall be informed of such disclosures upon request; provided, however, that for disclosures made to insurance institutions such a notation need only be entered at the time the disclosure is first made.

6. (a) The provisions of this subdivision shall apply where a provider of a health or social service possesses confidential HIV related information relating to individuals who are recipients of the service, and a federal, state or local government agency supervises or monitors the provider or administers the program under which the service is provided.

(b) Confidential HIV related information relating to a recipient of such service may be disclosed in accordance with regulations promulgated pursuant to paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article to an authorized employee or agent of such provider or government agency, when reasonably necessary for such supervision, monitoring, administration, or provision of such service. The term "authorized employee or agent", as used in this subdivision shall only include any employee or agent who would, in the ordinary course of business

of the provider or government agency, have access to records relating to the care of, treatment of, or provision of a health or social service to the protected individual.

7. Nothing in this section shall limit a person's or agency's responsibility or authority to report, investigate, or redisclose, child protective and adult protective services information in accordance with title six of article six and titles one and two of article nine-B of the social services law, or to provide or monitor the provision of child and adult protective or preventive services.

8. Confidential HIV related information shall be recorded in the medical record of the protected individual. The provisions of this section shall not prohibit the listing of acquired immune deficiency syndrome, HIV related illness or HIV infection in a certificate of death, autopsy report or related documents prepared pursuant to article forty-one of this chapter or other applicable laws, ordinances, rules or regulations relating to the documentation of cause of death, nor shall this section be construed to modify any laws, ordinances, rules or regulations relative to access to death certificates, autopsy reports or such other related documents. Under no circumstances shall confidential HIV related information be disclosable pursuant to article six of the public officers law.

9. Confidential HIV related information shall be disclosed upon the request of the health care worker HIV/HBV advisory panel, established pursuant to article twenty-seven-DD of this chapter, to the panel or its designee only when reasonably necessary for the evaluation of a worker who has voluntarily sought the panel's review.

### 2783. Penalties; immunities

1. Any person who shall:

(a) perform, or permit or procure the performance of, an HIV related test in violation of section twenty-seven hundred eighty-one of this article; or

(b) disclose, or compel another person to disclose, or procure the disclosure of, confidential HIV related information in violation of section twenty-seven hundred eighty-two of this article; shall be subject to a civil penalty not to exceed five thousand dollars for each occurrence. Such penalty may be recovered in the same manner as the penalty provided in section twelve of this chapter.

2. Any person who willfully commits an act enumerated in subdivision one of this section shall be guilty of a misdemeanor and subject to the penalties provided in section twelve-b of this chapter.

3. There shall be no criminal sanction or civil liability on the part of, and

no cause of action for damages shall arise against any physician or his or her employer, or health facility or health care provider with which the physician is associated, or public health officer, solely on account of:

(a) the failure to disclose confidential HIV related information to a contact or person authorized pursuant to law to consent to health care for a protected individual; or

(b) the disclosure of confidential HIV related information to a contact or person authorized pursuant to law to consent to health care for a protected individual, when carried out in good faith and without malice, and in compliance with this article; or

(c) the disclosure of confidential HIV related information to any person, agency, or officer authorized to receive such information, when carried out in good faith and without malice, and in compliance with the provisions of this article.

4. Any cause of action to recover damages based on a failure to provide information, explanations, or counseling prior to the execution of a written informed consent, or based on a lack of informed consent in the ordering or performance of an HIV related test in violation of this article shall be governed by the provisions of section two thousand eight hundred five-d of this chapter.

#### 2784. Applicability to insurance institutions and insurance support organizations

Except for disclosure to third party reimbursers and insurance institutions pursuant to paragraphs (i) and (j) of subdivision one of section twenty-seven hundred eighty-two of this article and except for disclosures pursuant to section twenty-seven hundred eighty-five of this article, the provisions of this article shall not apply to insurance institutions and insurance support organizations, except that health care providers associated with or under contract to a health maintenance organization or other medical services plan shall be subject to the provisions of this article.