

/* NEW YORK ADMINISTRATIVE CODE includes AIDS drug assistance programs; health facilities for PWAs; adult day care centers; home care and long term care; organ donor screening; testing for state employees, inmates, and the public; confidentiality; emergency chelters for homeless PWAs; hospices; discrimination; insurance; alcoholism facilities; needle exchange program; and clinical service rates. It is presented in four parts. */

PART 83

CONFIDENTIALITY OF HIV AND AIDS RELATED INFORMATION

3.1 Purpose. It is the responsibility and the intent of the State Department of Civil Service to adopt regulations pursuant to the HIV and AIDS Related Information Act (Public Health Law, article 27-F). All officers, employees and agents of the department shall at all times maintain the confidentiality of any HIV related information in their possession, in accordance with the requirements of the statute and these regulations.

83.2 Definitions. For the purposes of this Part:

- (a) The term department or Department of Civil Service means the New York State Department of Civil Service.
- (b) The term 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.
- (c) The term HIV infection means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.
- (d) The term HIV related illness means any illness that may result from or may be associated with HIV infection.
- (e) The term 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 HIV/AIDS.
- (f) The term confidential HIV related information means any 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 would identify an individual as having one or more of such conditions, including information pertaining to such individual's contacts.

(g) The term 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.

(h) The term significant risk of transmitting or contracting HIV infection or significant risk includes the following circumstances:

(1) sexual contact which exposes a mucous membrane or broken skin of a noninfected individual to blood, semen or vaginal secretions of an infected individual;

(2) sharing of needles or other paraphernalia used for preparing and injecting drugs between infected and noninfected individuals;

(3) the gestation, birthing or breast feeding of an infant when the mother is infected with HIV;

(4) transfusion or transplantation of blood, organs, or other tissues obtained from an infected individual to an uninfected individual, provided that such products have not tested negatively for antibody or antigen and have not been rendered noninfective by heat or chemical treatment;

(5) other circumstances, not identified in paragraphs (1) through (4) of this subdivision, during which a significant risk body substance (other than breast milk) of an infected person contacts mucous membranes (e.g., eyes, nose, mouth) or nonintact skin (e.g., open wound, dermatitis, abraded areas) or the vascular system of a non-infected person;

(6) circumstances that constitute significant risk shall not include:

(i) exposure to urine, feces, sputum, nasal secretions, saliva, sweat, tears or vomitus that does not contain visible blood;

(ii) human bites where there is no direct blood to blood, or blood to mucous membrane contact;

(iii) exposure of intact skin to blood or any other body substance; and

(iv) occupational settings where individuals use scientifically accepted barrier techniques and preventing practices in circumstances which would otherwise pose a significant risk.

83.3 Antidiscrimination. (a) It is the policy of the department that the department and its officers, employees and agents shall not discriminate against any individual by virtue of his or her being identified as, or suspected of, having AIDS, HIV infection, or HIV related

illness.

(b) The department will take appropriate steps to make its officers, employees and agents aware of the department's policy as set forth in this section. All officers, employees and agents of the department shall act in a manner consistent with this policy when performing their official duties for the department.

83.4 Access to confidential HIV related information. (a) Employees or agents of the department are not to have access to confidential HIV related information maintained by the department except as part of their official duties.

(b) Agents of the department may be authorized to have access to confidential HIV related information maintained by the department only when reasonably necessary to perform the specific activities for which they have been designated as agents of the department.

83.5 Confidentiality. (a) No person who obtains confidential HIV related information in the course of performing his or her duties as an employee or agent of the department may disclose such information except in accordance with the provisions of the HIV and AIDS Related Information Act (Public Health Law, article 27-F) and the provisions of this Part.

(b) Any disclosure, except disclosures to employees or agents of the department where reasonably necessary to carry out their official duties and to any person to whom disclosure is mandated by a court of competent jurisdiction, must be accompanied by the following written statement prohibiting further disclosure: "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 to further disclosure."

(c) All disclosures, except disclosures to employees and agents as reasonably necessary to perform their official duties, are to be appropriately documented in the case folder of the protected individual, who shall be informed of such disclosures upon request.

(d) No flags on case folders, lists on walls, or other similar displays

shall be used to indicate clients with HIV infection. This shall not be construed to prevent the existence of specialized caseloads.

(e) Confidential HIV related information shall not be disclosed in response to a request under the Freedom of Information Law (Public Officers Law, article 6) or in response to a subpoena. A court order issued pursuant to Public Health Law, section 2785 is required.

(f) The department will take appropriate steps to make all employees and agents aware of the provisions of the HIV and AIDS Related Information Act (PHL, article 27-F) concerning confidentiality of HIV related information and the department's rules regarding confidentiality of records. All authorized employees and agents of the department shall at all times maintain the confidentiality of any confidential HIV related information in their possession.

83.6 Records control. (a) The department will ensure the security of files which may contain confidential HIV related information. All officers, employees and agents of the department in possession of, or having access to, confidential HIV related information shall at all times maintain the security of all records that contain confidential HIV related information.

83.7 Protection of others at significant risk of infection. (a) The department shall implement and enforce a plan for the prevention of circumstances which could result in an employee or individual becoming exposed to blood or body fluids. Such a plan shall include:

- (1) training for appropriate persons on the use of protective equipment, preventive practices, and circumstances that constitute significant risk exposure;
- (2) appropriate training, counseling and supervision of persons regarding behaviors which pose a risk for HIV transmission at the work site. Contact notification, when appropriate, shall be conducted in accordance with Public Health Law, Section 2782(4) and 10 NYCRR 63.7;
- (3) use of accepted protective practices to prevent skin and mucous membrane exposure to blood, other body fluids, or other significant risk body substances, as defined in 10 NYCRR 63.9(b);
- (4) the use of accepted preventive practices while handling instruments or equipment that may cause puncture injuries; and

(5) the provision, as appropriate, of personal protective equipment which is of appropriate quality and quantity.

(b) The department shall implement and enforce a plan for responding to incident to exposure at the employee's work site to blood, other body fluids or other significant risk body substances. Such program shall include:

(1) a system for receiving voluntary reports of all exposures thought to represent circumstance for significant risk;

(2) availability of services for evaluating the circumstances of such a reported exposure and providing appropriate follow-up of anyone who has been exposed, which includes:

(i) medical and epidemiological assessment of an employee or individual who is the source of the exposure, where that source is known, available and agrees to be tested;

(ii) if epidemiologically indicated, HIV counseling and testing of the source as permitted under article 27-F of the Public Health Law. Where the HIV status is not known to anyone who has been exposed, disclosure of the HIV status of a living person can be made only with the express written consent of the source or pursuant to court order; and

(iii) appropriate medical follow-up of employees and individuals who have be exposed; and

(3) assurances for protection of confidentiality for those involved in reported exposures.

83.8 Severability. If any provision of this Part or the application thereof to any person or circumstance is judged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.

TITLE 7 CORRECTIONAL SERVICES

PART 7 AIDS CONFIDENTIALITY

Section 7.1 Purpose. It is the responsibility and the intent of the Department of Correctional Services (the department) to adopt regulations to fully comply with the provisions of Public Health Law, article 27-F. All department staff should be aware that there are

statutory penalties for the violation of Public Health Law article 27-F, including criminal misdemeanor penalties and/or civil penalties up to \$5,000 for each violation.

A violation of Public Health Law article 27-F or of this Part may result in departmental discipline.

7.2 Definitions. When used in this Part, the following terms have the following meanings:

- (a) 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.
- (b) HIV infection means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.
- (c) HIV-related illness means any illness that may result from or may be associated with HIV infection.
- (d) 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 HIV infection.
- (e) Capacity to consent means an individual's ability, determined without regard to such individual's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure, and to make an informed decision concerning such service, treatment or procedure.
- (f) Protected individual means a person who is the subject of an HW-related test or who has been diagnosed as having HIV infection, AIDS or HIV-related illness.
- (g) 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.
- (h) 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 the Public Health Law or the Social Services Law; public assistance or care as defined in article 1 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 1 of the Mental Hygiene Law; probation services, provided pursuant to article 12 of the Executive Law; parole services, provided pursuant to article 12-B of the Executive Law; correctional services, provided pursuant to the Correction Law; and detention and rehabilitative services provided pursuant to article 19-G of the Executive Law.

(i) 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 [or 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 this definition.

(j) 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.

(k) 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. As used in this Part, the term includes but is not limited to, the Deputy Commissioner/Director of Correctional Medical Standards, the medical director of a correctional facility, physicians, dentists and nurses providing patient care, the counselor of the protected individual, if deemed necessary by the treating physician for the provision of counseling services, and department personnel involved in direct patient care, as determined by the physician.

7.3 Antidiscrimination. (a) It is the policy of the department that the department and its officers, employees and agents shall not discriminate against any individual by virtue of his or her being identified or suspected of being identified as having AIDS, HIV infection, or HIV-related illness.

(b) The policy set forth in subdivision (a) of this section shall not be construed to prevent differential treatment of inmates on account of HIV status or current medical condition, provided that such differential treatment is necessary in order to provide adequate and appropriate medical treatment and services for individuals identified, or suspected of being identified, as having AIDS, HIV infection or HIV-related illness, or in order to protect the health and safety of such individuals, where it has been determined that there is a significant risk to the health and safety of the individual or another person, by virtue of the individual's HIV status or medical condition.

(c) The department shall ensure that its authorized officers, employees and agents are aware of the department's policy as set forth in this section. All officers, employees and agents of the department shall act in a manner consistent with this policy.

7.4 HIV-related testing. (a) Except as noted in subdivision (b) of this section no physician or other person authorized pursuant to law may order an HIV-related test without first obtaining written informed consent.

(1) Informed consent shall include providing pre-test counseling to the person to be tested or, if such person lacks capacity to consent, to the person lawfully authorized to consent to health care for such person. Pre-test counseling shall include:

(i) explanations regarding the nature of HIV infection and HIV-related illness, an explanation of the HIV-related test, including a description of the procedure to be followed, meaning of the test result, and the benefits of taking the test, including early diagnosis and medical intervention;

(ii) information regarding discrimination problems which might occur as a result of unauthorized disclosure of HIV-related information and legal protections prohibiting such disclosures;

(iii) information on preventing exposure or transmission of HIV infection, including behavior which poses a risk of HIV transmission;

(iv) an explanation that the test is voluntary, that consent may be withdrawn at any time and information on the availability of anonymous HIV testing, including the location and telephone numbers of anonymous test sites and that anonymous testing is not available in the facilities;

(v) written informed consent must be executed on form HS-1.

(b) Informed consent is not required in the following situations, but pre- and post-test counseling shall be offered in situations described in paragraphs (1) and (2) of this subdivision:

(1) for court ordered testing pursuant to Civil Practice Law and Rules, section 3121;

(2) if otherwise specifically authorized or required by State or Federal law;

(3) for testing related to procuring, processing, distributing or use of a human body or 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 persons, provided that if the test results are communicated to the tested person, post-test counseling is required;

(4) for 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;

(5) for testing of a deceased person to determine cause of death or for epidemiological purposes.

(c) In addition to an explanation of the test result, post-test counseling or referrals with respect to a positive test result, shall be provided to the person who consented to the test. Such post-test counseling and referrals must address:

(1) coping emotionally with the test results;

(2) discrimination issues;

(3) information on the ability to release or revoke the release of confidential HIV-related information;

(4) information on preventing exposure to or transmission of HIV infection information on available medical treatment;

(5) the need to notify contacts to prevent transmission, including information on State or county assistance in voluntary contact notification, if appropriate.

(d) When a negative HIV-related test result is communicated to the individual, counseling shall be offered discussing:

(1) the meaning of and limitation of the test result; and

(2) the means to remain free of infection and means to avoid transmitting the virus.

(e) A physician or other person authorized pursuant to law to order an HIV-related test shall certify on a laboratory requisition form that informed consent has been obtained.

7.5 Confidentiality and disclosure. (a) It is the policy of the department that whenever disclosure of confidential HIV-related information is warranted as defined in subdivision (b) of this section, such disclosure, whenever possible, should be made pursuant to the consent of the protected individual, and all reasonable steps, including appropriate counseling, should be taken to obtain consent. Once consent has been obtained, Form HS-2, or any other form approved by the Department of Health, is to be used as a release form for disclosure of confidential HIV-related information. Only Form HS-2, or other Department of Health approved form, is to be used for this purpose. A general medical release is not sufficient for the purpose of disclosing confidential HIV-related information.

(b) No person who obtains confidential HIV-related information in the course of his or her employment with the department or pursuant to a release of confidential HIV-related information may disclose or be compelled to disclose such information, except to the following:

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

(2) any person to whom disclosure is authorized pursuant to a release of confidential HIV-related information in accordance with subdivision (a) of this section;

(3) a health care provider of the protected individual as defined in section 7.2 of

this Part;

(4) Deputy Commissioner/Director of Correctional Medical Standards and employees within the Division of Health Services authorized by the Deputy Commission as necessary to perform their duties and to provide appropriate supervision, monitoring, administration or provision of treatment and services offered to the protected individual;

(5) Assistant Commissioner for Health Services and employees within the Division of Health Services as necessary on a need to know basis for providing appropriate supervision, monitoring, administration or provision of treatment and services offered to the protected individual;

(6) superintendent of the facility in which the protected individual is incarcerated as necessary on a need to know basis for providing appropriate supervision, monitoring, administration or provision of treatment and services offered to the protected individual, including services associated with possible parole release;

(7) attorneys for the department or with the Office of the Attorney General when access is reasonably necessary in the course of providing legal services and when reasonably necessary for supervision, monitoring, administration or provision of services;

(8) authorized employees of the facility Business Office, Deputy Superintendent for Administration, Central Office Budget and Finance, Bureau of Internal Controls, the Deputy Commissioner of Administration, and the Division of Audit and Control as necessary to ensure appropriate payment of medical services or to track expenses associated with HIV-related care;

(9) Assistant Commissioner for Population Management as necessary on a need to know basis for providing appropriate supervision, monitoring, administration or provision of treatment and services offered to the protected individual, including services associated with possible parole release;

(10) institutional parole officer from the facility medical director by use of the Health Discharge Summary Sheet;

(11) Parole Services Program Specialist by the Deputy Commissioner/Director of Correctional Medical Standards;

(12) authorized employee of the State Commission of Correction, as defined by the rules and regulations promulgated by the State Commission of Correction;

(13) a clinician of the Office of Mental Health upon the clinician's written request provided that the clinician is involved in the treatment of the individual, or if facility medical personnel believes the release of confidential HIV-related information to the clinician may be beneficial to the treatment of the individual;

(14) a medical director of a local correctional facility or the medical director of a Federal correctional facility or the medical director of the Bureau of Immigration and Naturalization Services in which the protected individual is incarcerated or is to be transferred, to the extent that such medical director is authorized to access such information with respect to a protected individual;

(15) a funeral director upon taking charge of the remains of a deceased person when such funeral director has access in the ordinary course of business to HIV related information on the death certificate of the deceased individual, as authorized

by Public Health Law, section 2785;

(16) any person not listed above, to whom disclosure is authorized pursuant to Public Health Law, section 2782.1(a) through (o) or 2785.

(c) Confidential HIV-related information of a protected person may be disclosed to authorized employees or agents of a governmental agency pursuant to the regulations of the governmental agency when the person providing health or social services is regulated, supervised or monitored by the governmental agency or when the governmental agency administers the health program or a social service program and when such employees or agents have access to records in the ordinary course of business and when access is reasonably necessary for regulation, supervision, monitoring, administration or provision of services. Such authorized employees or agents may include attorneys authorized by a governmental agency when access occurs in the ordinary course of providing legal services and is reasonably necessary for supervision, monitoring, administration or provision of services. Such authorized employees or agents may also include public health officers as required for conducting epidemiological or surveillance investigations pursuant to the State Sanitary Code. Such surveillance or investigational data shall also be disclosed by the Public Health Officer to the State Department of Health as required by the State Sanitary Code.

(d) Confidential HIV-related information of a protected person may be disclosed to authorized employees or agents of a provider of health or social services when such provider is either regulated, supervised or monitored by a governmental agency or when a governmental agency administers the provider's health or social service program, and when such employees or agents have access to records in the ordinary course of business and when access is reasonably necessary for regulation, supervision, monitoring, administration or provision of services. Such authorized employees or agents may include attorneys authorized by persons providing health services when access occurs in the ordinary course of providing legal services and is reasonably necessary for supervision, monitoring, administration or provision of services.

(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 the 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:

(i) the disclosure would not be in the best interest of the protected individual; or

(ii) the protected individual is authorized pursuant to law to consent to such care and treatment.

A physician's decision to disclose pursuant to this paragraph, and the basis for that decision shall be recorded in the medical record.

(f) Written disclosure must be accompanied by a written statement prohibiting further disclosure. The statement shall include the following language 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 disclosures 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." Form HS-3 is to be used for this purpose.

(g) If oral disclosures are necessary, they must be accompanied or followed as soon as possible, but no later than 10 days, by the statement required by subdivision (f) of this section.

(h) The statement required by subdivisions (f) and (g) of this section is not required for release to the protected person or to a person authorized by law to consent to health care for the individual when the protected individual lacks capacity, or for releases made by a physician or public health officer to a contact. For disclosures of confidential HIV-related information from the patient's medical record to persons who are permitted to access this information pursuant to paragraphs (b) (4)-(15) of this section and physicians or nurses or their authorized staff who are permitted to access this information pursuant to paragraph (b)(3) of this section, it shall be sufficient for the statement required by subdivisions (f) and (g) of this section to appear in the medical record itself.

(i) No person to whom confidential HIV-related information has been disclosed shall disclose the information to another person except as authorized by this Part, provided, however, that the provisions of this Part shall not apply to the protected individual or a natural person who is authorized pursuant to law to consent to health care for the protected individual.

7.6 Documentation of HIV-related information and disclosures. (a) Confidential HIV-related information shall be recorded in the inmate's medical record such that it is readily accessible to provide proper care and treatment.

(1) If the protected individual specifically requests, on a prospective basis, the results of the HIV antibody testing shall not be placed in the individual's medical record.

(2) No flags on case folders or charts, lists on walls or other similar displays shall be used to indicate individuals with HIV infection. This shall not be construed to prevent the existence of specialized case loads.

Confidential HIV-related information shall not be disclosed in response to a request under the Freedom of Information Law (Public Officers Law, article 6) or in response to a subpoena.

The department will ensure that all employees and agents authorized to receive confidential HIV-related information under these regulations are aware of the provisions of the HIV and AIDS Related Information Act (Public Health Law, article 27-

F) concerning confidentiality of HIV-related information and the department's rules regarding confidentiality of records. All authorized employees and agents of the department shall at all times maintain the confidentiality of any confidential HIV-related information in their possession.

(e) Confidential HIV-related information shall be noted in a certificate of death, autopsy report or related documents prepared pursuant to Public Health Law, article 41 or other laws relating to documentation of cause of death.

(f) All disclosures of confidential HIV-related information must be noted in the inmate's medical record, except:

(1) Notation is not required for disclosure to agents or employees of health facilities or health care providers authorized under section 7.5(b)(4) or (7) of this Part or for disclosure to physicians or nurses or their clerks authorized under section 7.5(b)(3) of this Part.

(g) The protected person shall be informed of disclosures of HIV information upon request of the protected person.

7.7 Contact notification. (a) A physician employed by the department or rendering professional services at the request of the department or facility of the department may disclose HIV-related information, without the protected person's consent, to a contact or to a public health officer when:

(1) the physician reasonably believes disclosure is medically appropriate and a significant risk of infection exists; and

(2) the protected person has been counseled to notify his/her contacts and the physician reasonably believes the protected person will not inform the contacts.

(b) The physician must inform the protected person of the physician's intent to disclose and the physician must comply with the protected person's choice of whether the physician or a public health officer will attempt to notify the contact. All notifications shall be in person except where circumstances reasonably prevent doing so.

(c) The identity of the protected person shall not be disclosed to the contact.

(d) When a public health officer is requested to notify contacts, the officer shall meet, when possible, with the protected party to counsel and verify information prior to any notification of such person's contacts.

(e) The person notifying the contact shall provide or make referrals for the provision of 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.

(f) If a protected person dies and the physician reasonably believes the protected person had not informed his/her contacts and reasonably believes disclosure is medically appropriate and that a significant risk of infection exists, the physician may notify the contact or request the public health officer to notify the contact. All such notifications shall be in person, except where circumstances reasonably prevent doing so and the identity of the deceased shall not be disclosed.

(g) A physician shall have no obligation to identify, locate or notify any contact.

7.8 Records control. (a) The Deputy Commissioner/Director of Correctional Medical Standards shall develop and implement policies and procedures for persons authorized to obtain confidential HIV-related information pursuant to section 7.5(b)(3) through (8) inclusive of this Part to ensure that records are maintained securely, including records which are electronically stored, and used for the purpose intended.

(b) The Deputy Commissioner/Director of Correctional Medical Standards shall develop and implement procedures for handling requests by other parties for confidential HIV-related information.

(c) No employee or agent of the department who has access to confidential HIV related information shall disclose such information to any other person unless such person also has access to confidential HIV-related information as described in section 7.5(b) of this Part.

(d) Each employee who is given authorized access to the health records of an identified person that includes confidential HIV-related information shall:

(1) be advised in writing by the supervisor that the employee shall not:

(i) examine documents or computer data containing such HIV-related information unless required to do so in the course of his/her official duties and responsibilities;

(ii) remove or copy any such documents or computer data unless he or she is acting within the scope of his or her assigned duties;

(iii) discuss the content of any such documents or computer data with any person unless that person is authorized to have access to such documents or data.

7.9 Significant risk. (a) The three factors necessary to create a significant risk of contracting or transmitting HIV infection are:

(1) the presence of a significant risk body substance;

(2) a circumstance which constitutes significant risk for transmitting or contracting HIV infection; and

(3) the presence of an infectious source and a noninfected person.

(b) Significant risk body substances are blood, semen, vaginal secretions, breast milk, tissue and the following body fluids: cerebrospinal, amniotic, peritoneal, synovial, pericardial, and pleural.

(c) Circumstances which constitute significant risk for transmitting or contracting HIV infection are as follows:

(1) sexual intercourse (vaginal, anal, oral) which exposes a noninfected individual to blood, semen or vaginal secretions of an infected individual;

(2) sharing of needles and other paraphernalia used for preparing and injecting drugs between infected and noninfected individuals;

- (3) the gestation, birthing or breast feeding of an infant when the mother is infected with HIV;
- (4) transfusion or transplantation of blood, organs, or other tissues obtained from an infected individual to an uninfected individual, providing such products have not tested negatively for antibody or antigen and have not been rendered noninfective by heat or chemical treatment;
- (5) other circumstances not identified in paragraphs (1) through (4) of this subdivision during which a significant risk body substance (other than breast milk) of an infected individual contacts mucous membranes (e.g., eyes, nose, mouth), nonintact skin (e.g., open wound, skin with a dermatitis condition, abraded areas), or the vascular system of a noninfected person. Such circumstances include, but are not limited to, needle stick or puncture wound injuries and direct saturation or permeation of these body surfaces by the infectious body substance.

(d) Circumstances that involve significant risk shall not include:

- (1) exposure to urine, feces, sputum, nasal secretions, saliva, sweat, tears or vomitus that does not contain blood that is visible to the naked eye;
- (2) human bites where there is no direct blood to blood, or blood to mucous membrane contact;
- (3) exposure of intact skin to blood or any other body substance;
- (4) occupational settings where individuals use scientifically accepted bar techniques and preventive practices in circumstances which would otherwise pose a significant risk.

7.10 Training and protection of persons who may be in contact with the human immunodeficiency virus (HIV). (a) The department will seek to protect individuals, in contact with protected individuals, when such contact creates a significant risk of contracting or transmitting HIV infection.

(b) The following procedures will be adopted to protect employees:

- (c) Employees will be instructed to use universal precautions and infection control equipment in accordance with the Centers for Disease Control in situations where there is actual or potential contact with significant risk body substances as defined in section 7.9(b) of this Part.
 - (2) Employees shall use generally accepted preventive practices during job-related activities which involve the use of contaminated instruments or equipment which may cause puncture injuries.
 - (3) Employees shall receive education at the time of employment and appropriate intervals thereafter on the use of protective equipment, preventive practices, and

circumstances which represent a significant risk for all employees whose job-related tasks involve, or may involve, exposure to significant risk body substances.

(c) Employees may voluntarily report exposures thought to represent a circumstance for significant risk to facility health services personnel or the Deputy Commissioner/Director of Correctional Medical Standards. The circumstances of the reported exposure shall be evaluated and appropriate follow-up of the exposed individual shall be offered, including the following:

(1) medical and epidemiological assessment of the individual who is the source of the exposure, where that individual is known and available;

(2) if epidemiologically indicated, HIV counseling and referral for voluntary testing of the exposed individual. If the HIV status is not known to the exposed individual, disclosure can be made with the express written consent of the protected individual, or pursuant to court order, or a person authorized by law to consent to health care for the protected individual if such person lacks capacity to consent;

(3) appropriate medical follow-up of the exposed individual;

(4) assurances for protection of confidentiality for those involved in reported exposures;

(5) at any time that testing or other activity is considered pursuant to this section, both the source individual and the exposed individual shall, in addition to any other notices, receive and sign a notice that no one can be compelled to disclose information concerning an HIV test or HIV-related illness, nor can anyone be compelled to submit to an HIV-related test absent a court order or unless otherwise specifically authorized under State or Federal law;

(6) no person may retaliate against any individual by reason of his or her refusal to submit to testing or to disclosing confidential HIV-related information.

SUBTITLE E YOUTH

PART 164

AIDS TESTING AND CONFIDENTIALITY OF HIV-RELATED INFORMATION: REQUIREMENTS REGARDING TESTING, CONFIDENTIALITY AND PRECAUTIONS CONCERNING THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) AND ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

Section 164.1 Background and intent. (a) The purpose of this Part is to establish standards for the proper disclosure of HIV-related information within facilities operated by the Division for Youth, including foster homes.

(b) The purpose of this Part is to establish standards which limit the

risk of discrimination and harm to a youth's privacy which unauthorized disclosure of HIV information can cause.

(c) The purpose of this Part is to establish standards which seek to enhance the safety of employees, foster care parents and youth at facilities or programs operated by the Division for Youth.

164.2 Legal basis. (a) Section 500 of the Executive Law grants the director of the Division for Youth (director) the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction, and to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for youth.

(b) Section 2756 of the Public Health Law requires the director to promulgate regulations which provide safeguards against discrimination, abuse and other adverse actions directed toward protected individuals; provide for the proper disclosure of HIV-related information; protect individuals in contact with protected individuals when such contact creates a significant risk of contracting or transmitting HIV infection and establish criteria for determining when it is reasonably necessary for a provider of a health or social service or a State agency or a local government agency to have or use confidential HIV-related information for supervision, monitoring, investigation or administration.

164.3 Applicability. This Part applies to any Division for Youth operated residential facility, including foster homes and group homes.

164.4 Definitions pertaining to this Part. (a) HIV infection means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

(b) HIV-related illness means any illness that may result from or be associated with HIV infection.

(c) 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 HIV infection.

(d) Capacity to consent means an individual's ability, determined without regard to such individual's age, to understand and appreciate the nature and consequences of a proposed health care service,

treatment of procedure. and to make an informal decision concerning such service, treatment or procedure.

(e) 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.

(f) 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.

(g) Health or social services means any public or private care, treatment, clinical laboratory test, counseling or educational service for youth, and acute, chronic, custodial, residential, outpatient, home or other health care; public assistance; employment-related services, housing services, foster care, shelter, protective services, day care, or preventive services; services for the mentally disabled; probation services; parole services; correctional services; and detention and rehabilitative services, all as defined in section 2750(8) of the Public Health Law.

(h) Health facility means a hospital as defined in section 2801 of the Public Health Law, blood bank, blood center, sperm bank, organ or tissue bank, clinical laboratory, or facility providing care or treatment to persons with a mental disability.

(i) Health care provider means any physician, nurse, provider of services for the mentally disabled 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.

(j) 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.

(k) Person includes any natural person, partnership, association, joint venture, trust, public or private corporation or State or local government agency.

(l) Division means the New York State Division for Youth.

(m) Youth means any person between the ages of seven and 21

years (inclusive) who resides in any facility operated by the Division for Youth, including foster homes and group homes.

(n) 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.

164.5 Prevention of discrimination and abuse. (a) No youth will be subjected to discrimination because that youth is or is thought to be HIV infected. All youth shall be appropriately served by programs operated by the division according to the needs of the youth.

(b) The division shall provide training and/or training opportunities to all direct care personnel in facilities, foster care and group homes, which shall include, at a minimum:

(1) initial employee and annual in-service training regarding the symptoms, use and transmission of HIV and universal infection control procedures; and

(2) initial employee training and annual in-service training regarding legal prohibitions against unauthorized disclosure of confidential HIV-related information.

(c) A list of all employees and Division for Youth foster parents who have had such training shall be maintained by the division together with a list of those employees and Division for Youth foster parents authorized to access confidential HIV-related information. Such lists shall be updated annually.

(d) The Division for Youth shall establish and promulgate policies ensuring:

(1) maintenance of records containing confidential HIV-related information in a secure manner, limiting access to only those individuals permitted access pursuant to section 164.7 of this Part; and

(2) procedures for handling requests by other parties for confidential HIV-related information.

164.6 HIV-related testing. (a) Except as noted in paragraph (b)(2) of this section, no physician or other person authorized pursuant to law may order an HIV-related test without obtaining written informed consent.

(1) Informed consent shall consist of providing to the youth to be

tested or, if such youth lacks capacity to consent, as defined in section 164.4(d) of this Part to the person lawfully authorized to consent to health care for such person, pretesting counseling that includes:

(i) explanations regarding the nature of HIV infection and HIV-related illness, benefits of the test and its results, an explanation of the HIV-related test and results, the accuracy of the HIV-related test, the significance and benefits of the test and its result; and the benefits of taking the test, including early diagnosis and medical intervention;

(ii) information regarding discrimination problems which might occur as a result of unauthorized disclosure of HIV-related information and legal protections prohibiting such disclosures;

(iii) information on preventing exposure or transmission of HIV infection, including behavior which poses a risk of HIV transmission; and

(iv) an explanation that the test is voluntary and that consent may be withdrawn at any time; information on the availability of anonymous HIV testing, including the location and telephone numbers of anonymous test sites.

(b) (1) Written informed consent must be executed on a form developed or approved by the Department of Health, pursuant to that department's regulations found at 10 NYCRR section 63.4(a).

(2) Informed consent is not required in the following situations:

(i) for court ordered testing pursuant to Civil Practice Law and Rules, section 3121;

(ii) if otherwise authorized or required by State or Federal law;

(iii) for testing related to procuring, processing, distributing or use of human body or human body part, including organs, tissue, eyes, bones, arteries, blood, semen or other body fluids for use in medical research or therapy, or for transplantation to persons, provided that if the test results are communicated to the tested person, post-test counseling is required;

(iv) for 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;

(v) for testing of a deceased to determine cause of death or for epidemiological purposes.

(c) Post-testing counseling, and referrals with respect to a positive or

negative test result, shall be provided to the person who consented to the test. Such post-test counseling and referrals must address:

- (1) coping emotionally with the test results;
 - (2) discrimination issues;
 - (3) information on the ability to release or revoke the release of confidential HIV related information;
 - (4) information on preventing exposure to or transmission of HIV infection and the availability of medical treatment; and
 - (5) the need to notify contacts to prevent transmission, including information on State or county assistance in voluntary contact notification, if appropriate.
- (d) A physician or other person authorized pursuant to law to order an HIV-related test shall certify on a laboratory, requisition form that informed consent has been obtained.

164.7 Confidentiality and disclosure. (a) Access to a youth's confidential HIV related information shall be strictly limited. No flags or other markings on charts, lists on walls, or similar public displays shall be used to indicate youths' HIV status. Nothing in these regulations shall be construed to limit or enlarge access to that portion of a youth's file not containing confidential HIV-related information.

(b) 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:

- (1) 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;
- (2) any person to whom disclosure is authorized pursuant to a release of confidential HIV-related information in accordance with the regulations of the Department of Health set forth at 10 NYCRR section 63.4(a);
- (3) an agent or employee of a health facility or health care provider if:
 - (i) the agent or employee is authorized to access medical records;
 - (ii) the health facility or health care provider itself is authorized to

obtain the HIV-related information; and

(iii) the agent or employee provides health care to the protected individual, or maintains or processes medical records for billing or reimbursement;

(4) 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 youth or a child of the youth;

(5) 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;

(6) 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:

(i) back to the facility or provider of a health or social services;

(ii) to carry out the monitoring, evaluation, or service review for which it was obtained; or

(iii) to a Federal, State or local government agency for the purposes of and subject to the conditions provided in paragraph (19) of this subdivision;

(7) a Federal, State, county or local health officer when such disclosure is mandated by Federal or State law;

(8) authorized agencies as defined by Social Services Law, section 371 and corporations incorporated or organized to receive youth for adoption or foster care, in connection with foster care or adoption of a youth. Such agency shall be authorized to redisclose such information only pursuant to the provisions of article 27-F of the Public Health Law or in accordance with the provisions of section 373-A of the Social Services Law;

(9) third-party reimbursers or their agents to the extent necessary to reimburse health care providers, including health facilities, for health services, provided that, where necessary, an otherwise appropriate authorization for such disclosure has been secured by the provider;

(10) an insurance institution, for other than the purpose set forth in paragraph (9) 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:

- (i) the protected individual;
 - (ii) if the protected individual lacks the capacity to consent, such other person authorized pursuant to law to consent for such individual; or
 - (iii) 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 authorized in article 27-F of the Public Health Law;
- (11) any person to whom disclosure is ordered by a court of competent jurisdiction pursuant to section 2785 of the Public Health Law;
 - (12) an employee or agent of the Division of Parole, Division of Probation and Correctional Alternatives, or Commission of Correction, in accordance with regulations promulgated by those agencies;
 - (13) a medical director of a local correctional facility in accordance with regulations promulgated by the facility operator. Redislosure by the medical director is prohibited except as permitted under Public Health Law, article 27-F and its implementing regulations;
 - (14) a physician may disclose the confidential HIV-related information during contact notification pursuant to Public Health Law, article 27-F;
 - (15) a physician may, upon the informed consent of a youth or, if the youth lacks the capacity to consent, other person qualified to give consent on behalf of the youth, disclose confidential HIV-related information to a State, county, or local health officer for the purpose of reviewing the medical history of a youth to determine the fitness of the youth to attend school;
 - (16) confidential HIV-related information may be disclosed to a governmental agency or to authorized employees or agents of a governmental agency when the person providing health services is regulated by the governmental agency or when the governmental agency administers a health or social services program and when such employees or agents have access to records in the ordinary course of business and when access is reasonably necessary for supervision, monitoring, administration or provision of services. Such authorized employees or agents may include attorneys authorized by a

government agency when access occurs in the ordinary course of providing legal services and is reasonably necessary for supervision, monitoring, administration or provision of services;

(17) confidential HIV-related information may be disclosed to authorized employees or agents of a person providing health services when such person is either regulated by a governmental agency or when a governmental agency administers a health or social services program, and when such employees or agents have access to records in the ordinary course of business and when access is reasonably necessary for supervision, monitoring, administration or provision of services and when such employee or agent has been authorized by the division pursuant to this Part. Such authorized employees or agents may include attorneys authorized by persons providing health services when access occurs in the ordinary course of providing legal services and is reasonably necessary for supervision, monitoring, administration or provision of services;

(18) no person to whom confidential HIV-related information has been disclosed shall disclose the information to another person except as authorized by this Part; provided, however that the provisions of this Part shall not apply to the protected youth or a natural person who is authorized pursuant to law to consent to health care for the protected individual;

(19) 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 6 of article 6 and titles 1 and 2 of article 9-B of the Social Services Law, or to provide or monitor the provision of child and adult protective or preventive services;

(20) confidential HIV-related information shall not be disclosed to a health care provider or health care facility if the sole purpose of disclosure is infection control when such provider or facility is regulated under the Public Health Law and required to implement infection control procedures pursuant to Department of Health regulations;

(21) confidential HIV information shall not be released pursuant to a subpoena. A court order pursuant to Public Health Law, section 2785 is required;

(22) where a youth has obtained personal confidential HIV-related information from an alternate anonymous testing site, sexually transmitted disease clinic or the youth's private physician, the youth may choose not to disclose any information to the division. However, all youth must be informed that disclosing such information confidentially with selected division staff may help him or her to manage

the stress associated with HIV infection and also assist in planning for appropriate services in the community upon release. The test results will not be disclosed to any other person unless the youth, or other person authorized to give consent, gives prior written consent, pursuant to section 164.6 of this Part or unless disclosed pursuant to paragraph (23) of this subdivision. Youth must also be informed that once a positive test result is disclosed, it will be shared confidentially with a limited number of people directly involved with the youth's care and planning for care, as set forth below. These people will be limited to the following:

(i) the facility's medical staff caring for the youth (i.e., physician's assistant, nurse, and the supervising physician of the physician's assistant or primary care physician serving the youth where the facility lacks other medical staff);

(ii) the facility director or, as applicable, the youth's foster parents and the division staff responsible for supervision of the youth's foster care case; and

(iii) the director of the division's Bureau of Health and Recreation Services;

(23) if, in the judgment of the facility health staff and facility director or, as applicable, the division staff responsible for supervision of the youth's foster care case, the results must be disclosed to additional party(ies), including the youth's parent(s) or guardian(s), the facility director or foster care case supervisor shall consult with the director of the Bureau of Health and Recreation Services. The director of the bureau must concur with the facility director or the division staff responsible for supervision of the youth's foster care case, if the information is to be disclosed to others not approved by the youth. In such cases the criterion used for overriding the youth's objections shall be that further disclosure of the information is critically important for the youth's physical or mental well-being, and that such benefit may not otherwise be obtained. At no time will confidential HIV-related information be disclosed in violation of Public Health Law, article 27-F. Any decision or action taken pursuant to this paragraph and the basis for such decision or action shall be recorded in the youth's medical file;

(24) where a youth who has acquired HIV-related information through a division employed physician or physician's assistant or through a physician maintained to serve division youth, either on a contract or fee-for-service basis, the youth must be advised that such information will be disclosed as set forth in paragraphs (22) and (23) of his subdivision; and

(25) where such access is necessary in furtherance of the duties of

the Division's Office of Counsel confidential HIV-related information may be disclosed to the Division's Office of Counsel and the New York State Attorney General's office.

164.8 Disclosure and release. (a) No confidential HIV-related information shall be disclosed pursuant to a general release or subpoena without a Supreme Court order, pursuant to Public Health Law, section 2785. Disclosure is permitted for HIV-related information pursuant to a specific release form which has been developed or approved by the Department of Health. The release must be signed by the protected individual or if the protected individual lacks capacity to consent pursuant to section 164.4(d) of this Part, by a person authorized pursuant to law to consent to health care for the individual.

(b) All written disclosures of confidential HIV information must be accompanied by a statement prohibiting redisclosure. The statement shall include the following language 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. 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 the State law and may result in a fine or jail sentence or both."

(c) If oral disclosures are necessary, they must be accompanied or followed as soon as possible, but no later than 10 days, by the statement required in subdivision (b) of this section. All disclosures, oral or written, shall be recorded in the youth's official record.

(d) The statement required by subdivisions (a) and (b) of this section is not required for release to the protected person or to his or her legal representative, for releases made by a physician or public health officer to a contact, or for releases made by a physician to a person authorized pursuant to law to consent to the health care of the protected person when the person has been counseled and the disclosure is medically necessary pursuant to Public Health Law, section 2782(4)(e). For disclosure of confidential HIV-related information from the youth's medical files to persons who are permitted access pursuant to section 164.7(b)(3)-(4), (6)-(7), (9)-(10) and (16)-(17) of this Part, it shall be sufficient for the statement required by

subdivisions (b) and (c) of this section to appear in the youth's medical record.

164.9 Protection of others at significant risk of infection. (a) Staff and youth protection. Since medical history and examination cannot reliably identify all youth infected with HIV or other blood-borne pathogens, blood and body-fluid precautions shall be consistently used for all youth. This approach, referred to as "universal blood and body-fluid precautions" or "universal precautions," or "universal infection control procedures" shall be used during job-related activities which involve or may involve exposure to significant risk body substances as defined in Department of Health regulations at 10 NYCRR section 63.9.

(b) Facilities and programs, including foster care, shall abide by any additional administrative guidelines regarding protective barriers or procedures as may be required by the division.

(c) Facility staff and division staff responsible for supervision of foster care cases will educate youth regarding behaviors which pose a risk for HIV transmission.

(d) Each division facility shall:

(1) implement and enforce a plan for the prevention of circumstances which could result in another exposed to blood or body fluids which could put them at risk for HIV infection, during the provision of services. Such a plan shall include:

(i) use of generally accepted protective barriers during the job-related activities which involve, or may involve, exposure to blood or body fluids. Such preventive action shall be taken by the employee with each youth and shall constitute an essential element for the prevention of bi-directional spread of HIV;

(ii) use of generally accepted preventive practices during job-related activities which involve the use of contaminated instruments or equipment which may cause puncture injuries;

(iii) training at the time of employment and yearly staff development programs on the use of protective equipment, preventive practices, and circumstances which represent a risk for all employees whose job-related tasks involve, or may involve, exposure to blood or body fluids;

(iv) provision of personal protective equipment for employees which is appropriate to the tasks being performed; and

(v) a system for monitoring preventive programs to assure

compliance and safety; and

(2) implement and enforce a plan for the management of individuals who are exposed to blood or body fluids. The plan shall include:

(i) a system for voluntary reporting of all exposures thought to represent a circumstance for significant risk;

(ii) availability of services for evaluating the circumstances of a reported exposure and providing appropriate follow-up of the exposed individual which includes:

(a) medical and epidemiological assessment of the individual who is the source of the exposure, where that individual is known and available;

(b) if epidemiologically indicated, HIV counseling and testing of the source individual as permitted under Public Health Law, article 27-F. Where the HIV status is not known to the exposed individual, disclosure can be made only with the express written consent of the protected individual or pursuant to a Supreme Court order; and

(c) appropriate medical follow-up of the exposed individual; and

(iii) assurances for protection of confidentiality for those involved in reported exposures.

164.10 Monitoring. Employees and agents of the division responsible for monitoring, inspecting, supervising, and investigating programs operated by the division shall have access to confidential HIV information to the extent necessary to discharge those responsibilities.

SUBTITLE CC DIVISION OF PAROLE

PART 8011

CONFIDENTIALITY OF HIV- AND AIDS-RELATED INFORMATION

Section 8011.1 Purpose. It is the responsibility and the intent of the division to adopt regulations pursuant to the HIV- and AIDS-Related Information Act (Public Health Law, article 27-F). All officers, employees, and agents of the division shall at all times maintain the confidentiality of any HIV-related information in their possession, in accordance with the requirements of the statute and this Part.

8011.2 Definitions. When used in this Part:

- (a) AIDS means acquired immune deficiency syndrome, as may be defined from time to time by the centers for disease control (CDC) of the United States Public Health Service.
- (b) HIV infection means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.
- (c) HIV-related illness means any illness that may result from or may be associated with HIV infection.
- (d) 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) 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.
- (f) Confidential HIV- related information means any 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, when such information is in the possession of a provider of one or more health or social services or has been obtained pursuant to a release of confidential HIV-related information. Parole services provided by the division are health or social services pursuant to Public Health Law, section 2780(8). When such information is in the possession of an authorized officer, employee or agent of the division, the provisions of these regulations apply regardless of whether the inform as been obtained by consent, by authorized disclosure pursuant to the provisions of the HIV and AIDS-Related Information Act (Public Health Law, article 27-F), or in any other manner, including from unofficial sources or through unofficial communications.
- (g) Authorized officer or employee means an officer or employee of the division who is permitted to have access to confidential HIV information; such individuals, described more specifically in section 8011.4 of this Part, are those officers and employees who, in the performance of their duties for the division, need to have access to records or information relating to the care of, treatment of, or administration or provision of parole services to, protected individuals.
- (h) Authorized agent means:

(1) an entity that has contracted with the division to provide treatment or parole services to parolees, or an employee of such entity, provided that the entity, or the employee, needs to know confidential HIV-related information in order to provide the contracted for service; and

(2) attorneys providing legal services to the division, its officers, or employees provided that access occurs in the ordinary course of providing legal services and is reasonably necessary for the provision of legal services.

(i) Need to know means that knowledge of confidential HIV-related information is reasonably necessary in order to provide appropriate treatment or parole service to recipients of such services, or to audit, monitor or supervise the provision of such services, or to administer or plan the provision of such services on an individual, regional or statewide planning basis.

(j) Treatment or parole services means services provided to inmates or releasees by officers, employees or agents of the division pursuant to article 12-B of the Executive Law, officers or employees of the United States Parole Commission, or parole officers of another state pursuant to article 12-B of the Executive Law.

(k) Release of confidential HIV-related information means a written authorization for disclosure of confidential HIV-related information which complies with the requirements of PHL, section 2780(9). Any such release obtained from a protected individual by any officer or employee of the division shall be obtained only by using Department of Health approved form (see subdivision [r] of this section) -- Division of Parole form 4136.

(l) 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.

(m) 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. As used in this Part, the term includes the medical director of a State correctional facility, and also includes any physician providing any officer, employee or agent of the division with a confirmed diagnosis of AIDS, HIV infection or HIV-related illness.

(n) Capacity to consent means an individual's ability, determined

without regard to such individual's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure, and to make an informed decision concerning such service, treatment, or procedure.

(o) Significant risk of transmitting or contracting HIV infection or significant risk means the circumstances set forth in regulations promulgated by the Department of Health at 10 NYCRR section 63.9. Those provisions are summarized as follows. The following body fluids and substances are currently considered to be significant risk body substances: blood, semen, vaginal secretions, breast milk, tissue, cerebrospinal fluid, amniotic fluid, peritoneal fluid, synovial fluid, pericardial fluid, and pleural fluid. The following circumstances constitute significant risk of transmitting or contracting HIV infection:

(1) sexual contact which exposes a mucous membrane or broken skin to blood, semen or vaginal secretions of an infected individual;

(2) sharing of needles or other paraphernalia used for preparing and injecting drugs between infected and noninfected individuals;

(3) the gestation, birthing or breast feeding of an infant when the mother is infected with HIV;

(4) transfusion or transplantation of blood, organs, or other tissues obtained from an infected individual to an uninfected individual, provided that such products have not tested negatively for antibody or antigen and have not been rendered noninfective by heat or chemical treatment; and

(5) other circumstances, not identified in paragraphs (1) through (4) of this subdivision, during which a significant risk body substance (other than breast milk) of an infected person contacts mucous membranes (e.g., eyes, nose, mouth) or nonintact skin (e.g., open wound, dermatitis, abraded areas) or the vascular system of a non-infected person. [footnote 1: The following do not constitute significant risk: exposure to urine, feces, sputum, nasal secretions, saliva, sweat, tears or vomitus that does not contain visible blood; human bites where there is no direct blood to blood or blood to mucous membrane contact; exposure of intact skin to blood or any other body substance.]

(p) Confirmed diagnosis means confirmation provided by an authorized laboratory that an individual has AIDS, HIV-related illness, or HIV infection.

(q) Universal precautions means the use of scientifically accepted protective barriers and preventive practices in circumstances which involve, or may involve, exposure to significant risk body substances or

8011.3 Antidiscrimination. (a) It is the policy of the division that the division and its officers, employees and agents shall not discriminate against any individual by virtue of his or her being identified as, or suspected of, having AIDS, HIV infection, or HIV-related illness.

(b) The policy set forth in subdivision (a) of this section shall not be construed to prevent differential treatment of inmates or releasees on account of HIV status or current medical condition, provided that such differential treatment is necessary in order to provide adequate and appropriate treatment or parole services for individuals identified as having AIDS, HIV infection or HIV-related illness.

(c) The division will take appropriate steps to make its authorized officers, employees and agents aware of the division's policy as set forth in this section. All officers, employees and agents of the division shall act in a manner consistent with this policy when performing their official duties for the division.

8011.4 Access to confidential HIV-related information. The following employees of the division are considered authorized employees who may have access to confidential HIV-related information on a need to know basis, as set forth in this section.

(a) Any parole officer assigned to, or any other employee providing treatment or parole services for, a particular case, and any parole officer who is covering a case for the regularly assigned parole officer and who needs access to the parole file in order to perform whatever duties are necessary to cover the case, may have access to any confidential HIV-related information contained in the parole file for that case;

(b) Other staff who make entries in case folders or electronic records may have access to confidential HIV-related information, but only to the extent that they actually make entries relating to the provision of treatment or parole services;

(c) The direct line casework supervisor (this will ordinarily be the senior parole officer, but may be any other individual performing that function, regardless of actual title) may have access, on a need to know basis, to confidential HIV-related information contained in the parole file for any case for which that direct line supervisor performs any supervisory duties.

(d) All supervisors in the direct line of supervision, and any officer or employee performing a planning, monitoring, administrative oversight, litigation or casework assistance function, may have access to any confidential HIV-related information contained in a particular parole file, provided that access to the parole file is reasonably necessary in order to carry out an appropriate supervisory, planning, monitoring administrative oversight, litigation or casework assistance function. The direct line of supervision will ordinarily include the area supervisor, deputy regional director regional director and the director of operations, or any other officer or employee designated to perform an equivalent supervisory function, regardless of actual title. Access to the parole file, and to any confidential HIV-related information contained in the file, will be on a need to know basis.

(e) Members of the Board of Parole.

8011.5 Confidentiality. (a) No authorized officer or employee or agent of he division who obtains confidential HIV-related information in the course of performing his or her duties as an officer, employee or agent of the division may disclose such information except in accordance with the provisions of the HIV- and AIDS-Related Information Act (Public Health Law, article 27-F) and the provisions of these regulations.

(b) It is the policy of the division that disclosure of confidential HIV-related information should, whenever possible, be made pursuant to the consent of the protected individual, and all reasonable steps, including appropriate counseling, should be taken to obtain consent. Once consent has been obtained, a release form that complies with the requirements of PHL, article 27-F is to be executed, and disclosure may then be made in accordance with that release. Only Department of Health approved form 4138 is to be used as a release form for disclosure of confidential HIV-related information. The provisions of this subdivision shall not apply to disclosures made for the purpose of defending litigation against the division, its officers or employees.

(c) In the absence of consent, disclosure may be made only to the following, and, except for disclosure pursuant to paragraph (1) of this subdivision, disclosure by parole officers and senior parole officers may be made only with the written approval of the area supervisor or designee or a parole services program specialist, such written approval to be placed in the parolee's file:

(1) an authorized officer or employee of the division, as defined in section 8011.2(g of this Part;

(2) an authorized agent of the division, as defined in section

8011.2(h) of this Part, if disclosure is necessary to permit the agent to carry out his, her or its functions for the division;

(3) officers or employees of parole authorities of another state, or the United States Parole Commission, when such officers or employees are providing treatment or parole services pursuant to article 12-B of the Executive Law;

(4) a health care provider, but only when knowledge of the HIV-related information is necessary to provide care or treatment to the protected individual; for purposes of these regulations, disclosure to the medical director of the appropriate state correctional facility, or appropriate medical staff at a Division for Youth facility, is deemed to be necessary for any parole violator returned to the custody of the State Department of Correctional Services or the State Division for Youth;

(5) the medical director of a local correctional facility whenever a parole violator is being lodged at that correctional facility;

(6) any person to whom disclosure is ordered by a court of competent jurisdiction; and

(7) any person not listed in this subdivision, to whom disclosure is authorized pursuant to PHL, section 2782.1(a) through (o).

(d) Any disclosure, except disclosures pursuant to paragraph (c)(1) of this section, must be accompanied or followed by a written statement prohibiting further disclosure. Form 4137, a copy of which appears in subdivision (i) of this section, is to be used for this purpose.

(e) All disclosures, except disclosures pursuant to paragraph (c)(1) of this section, are to be appropriately documented in the case folder of the protected individual, who shall be informed of such disclosures upon request.

(f) No flags on case folders, lists on walls, or other similar public displays shall be used to indicate clients with HIV infection. This shall not be construed to prevent the existence of specialized caseloads.

(g) Confidential HIV-related information shall not be disclosed in response to a request under the Freedom of Information Law (Public Officers Law, article 6) or in response to a subpoena. A court order issued pursuant to Public Health Law, section 2785 is required.

(h) The division will take appropriate steps to make all authorized officers, employees and agents aware of the provisions of the HIV- and AIDS-Related Information Act (PHL, article 27-F) concerning confidentiality of HIV-related information and the division's rules

regarding confidentiality of records. All authorized officers, employees and agents of the division shall at all times maintain the confidentiality of any confidential HW-related information in their possession.

- (i) Form 4137-HIV information disclosure form.

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This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosures of this information without 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.

8011.6 Records control. (a) The division will ensure the security of files which may contain confidential HIV-related information. All officers, employees and agents of the division in possession of, or having access to, confidential HIV-related information shall at all times maintain the security of all records that contain confidential HIV related information.

(b) The division will ensure that any secondary reports, presentations or statistical compilations that include or refer to confidential HIV-related information will, to the extent possible, minimize the use of names of, or other information tending to identify, protected individuals. With respect to documents that must identify a releasee by name, the division will ensure that confidential HIV-related information is included in such a document only if, and to the extent, necessary.

8011.7 Provision of confidential HIV-related information to authorized officers and employees of the division. (a) The Department of Correctional Services, and the medical directors of its correctional facilities, in accordance with the provisions of Executive Law, section 259-1 and Public Health Law, section 2782.1(1), may provide confidential HIV-related information to the authorized officers and employees of the division described in section 8011.4 of this Part, without the consent of the protected individual. Any such confidential HIV-related information will be subject to the limitations on disclosure

imposed by PHL, article 27-F and this Part.

(b) The medical director of a local correctional facility, in accordance with the provisions of Public Health Law, section 2782.1(1), may provide confidential HIV-related information to the authorized officers and employees of the division described in Section 8011.4 of this Part, without the consent of the protected individual. Any such confidential HIV-related information will be subject to the limitations on disclosure imposed by PHL, article 27-F and these regulations.

(c) The Division for Youth, in accordance with the provisions of Public Health Law, Section 2782.1(1), may provide confidential HIV-related information with respect to juvenile offenders to the authorized officers and employees of the division described in section 8011.4 of this Part, without the consent of the protected individual. Any such confidential HIV-related information will be subject to the limitations on disclosure imposed by PHL, article 27-F and these regulations.

(d) A provider of a health or social service (including but not limited to those entities that provide treatment or parole services to releasees, whether by contract with the division or otherwise) which provides health or social services to releasees, may provide confidential HIV-related information to the authorized officers and employees of the division described in section 8011.4 of this Part, without the consent of the protected individual. Any such confidential HIV-related information will be subject to the limitation on disclosure imposed by PHL, article 27-F and this Part.

8011.8 Protecting contacts when there is a significant risk of contracting or transmitting HIV infection. (a) The division will seek to protect individuals in contact with protected individuals, when such contact creates a significant risk of contracting or transmitting HIV infection through the exchange of significant risk body substances, as defined by the Department of Health and in section 8011.2(o) of this Part.

(b) The following procedures will be adopted with respect to employees:

(1) Employees will be instructed to use universal precautions in situations where there is the potential for exchange of significant risk body substances as defined by the Department of Health and in section 8011.2(o) of this Part.

(2) Appropriate protective clothing and equipment will be kept at an identified location at each work site.

(3) Each work site is to develop its own protocol, which is to be posted in areas accessible to all employees, for obtaining medical assistance for emergency situations.

(4) In the event of a work related potential exposure reported to the division (e.g., a needle stick), an employee involved in the potential exposure is to be referred to the employee health service for counseling and appropriate medical treatment.

(5) The division will promulgate risk reduction guidelines specific to the parole context and will ensure that all employees receive a copy of the guidelines and training with respect to the guidelines.

The following procedures will be adopted with respect to members of the public which are potential contacts of releasees.

(1) The families and/or individuals with whom a post-release residence is proposed, of all releasees, will be provided with information which will enable such individuals to make informed decisions regarding behavior that may limit the risk of contracting or transmitting AIDS. Such information will be made available to the families, or persons with whom a residence is proposed, of all releasees, regardless of the division's knowledge of the releasee's HIV status, and recipients of information will be advised that information packets are being provided to all families, regardless of a particular releasee's HIV status. Such information will consist of literature available to the division for distribution, whether of a general informational nature, or specifically tailored to the parole context.

(2) All releasees will be counseled to behave in ways that minimize the risk of contracting or transmitting HIV infection. Those releasees known to have a confirmed diagnosis of AIDS, HIV-related illness or HIV infection will be counseled with a view to encourage them to inform their families, or persons with whom a residence is proposed, and any contacts as defined in section 8011.2(1) of this Part, of their HIV status for the purposes of limiting infection. A releasee who has told parole staff that he or she plans to notify a contact will also be encouraged to execute a release of confidential HIV-related information permitting disclosure to contact(s) so that authorized employees of the division may participate in any discussions with the protected individual and his or her contacts that may occur in the course of parole supervision and that may involve confidential HIV-related information.

(3) In the event that a releasee known to have a confirmed diagnosis of AIDS, HIV related illness or HIV infection has been counseled in accordance with paragraph (2) of this subdivision, and the releasee refuses to execute a consent for release of confidential HIV-related information to contacts, and the parole officer or other employee

providing treatment or parole services has an articulable factual basis for believing that there is a known contact at significant risk of contracting HIV infection from the releasee and that the releasee will not inform the said contact of the releasee's HIV status, then the parole officer may, in accordance with policies and procedures of the division, request that an application be made for a court order permitting disclosure of confidential HIV-related information pursuant to Public Health Law, section 2785.

8011.9 Severability. If any provision of this Part or the application thereof to any person or circumstance is judged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.

405.22 Critical care and special care services (a) General provisions. Critical care and special care services are those services which are organized and provided for patients requiring care on a concentrated or continuous basis to meet special health care needs. Each service shall be provided with a concentration of professional staff and supportive services that are appropriate to the scope of services provided.

(1) The direction of each service, unless otherwise specified in this section, shall be provided by a designated member of the medical staff who has received special training and has demonstrated competence in the service related to the care provided.

(2) The provision of all critical care and special care services shall be in accordance with generally accepted standards of medical practice. The hospital shall ensure that written policies are developed by the medical staff and the nursing service and implemented for all special care and critical care services.

(i) The written policies and procedures shall be reviewed at least annually and revised as necessary and shall include at a minimum the following: infection control protocols, safety practices, admission/discharge protocols and an organized pro-gram for monitoring the quality and appropriateness of patient care, with identified problems reported to the hospital-wide quality assurance program and resolved.

(ii) The written protocols for patient admission to and discharge from a critical care or special care unit shall include:

- (iii) criteria for priority admissions;
 - (iv) alternatives for providing specialized patient care to those patients who require such care but who, due to lack of space, or other specified reasons such as infection or contagious disease, are not eligible for admission according to unit policy; and
 - (v) guidelines for the timely transfer and referral of patients who require services that are not provided by the unit.
- (3) Each critical care unit shall be organized as a physically and functionally distinct entity within the hospital.
- (i) Access shall be controlled in order to regulate traffic, including visitors, in the interest of infection control.
 - (ii) Emergency equipment and an emergency cart within each unit shall contain appropriate drugs and equipment, as determined by the medical staff and pharmacy service.
- (4) When critical or special care services are provided to pediatric patients, opportunities shall be provided for education, socialization, and play pertinent to the growth and development needs of these patients, unless medically contraindicated.
- (b) Organ and tissue transplantation service, Organ or tissue transplantation services shall be performed only in hospitals approved by the commissioner pursuant to part 710 of this Title,
- (1) General requirements. Each organ and tissue transplantation service shall meet the following requirements,
- (i) The hospital shall be a member of the Organ Procurement and Transplantation Network approved by the Secretary, U.S. Department of Health and Human Services and shall abide by its rules and requirements,
 - (ii) The hospital shall participate in a patient registry program with an organ procurement organization designated by the Secretary, U.S. Department of Health and Human Services, and if the hospital utilizes the services of a designated organ procurement organization to obtain donor organs it shall have a written agreement covering these services,
 - (iii) The criteria used for the selection of patients for transplant services shall be consistent with professional standards of practice, applied consistently, and made available to the public.
 - (iv) The hospital shall maintain a record of all patients who are

referred for transplantation and the date of their referral, the results of the evaluation of the candidates for transplantation which documents the reasons a candidate is determined to be either suitable or unsuitable for transplantation, the date suitable candidates are selected for transplantation, the date the transplantation surgery occurred, the organs or tissues utilized and the donor.