

/* New York Administrative Code, part 4 of 4 */

86-5.27 AIDS home care programs. Payment for services provided by LTHHCPs certified as AHCPs shall be at rates established pursuant to this Subpart provided, however, that nursing services provided by any LTHHCP to patients diagnosed with Acquired Immune Deficiency Syndrome (AIDS) as defined by ICD-9 codes 042, 043 and 044 shall be reimbursed pursuant to section 86-1.46(b) of this Part.

SUBPART 86-6

HOSPICES

Section 86-6.1 Definitions. As used in this Subpart, the following terms shall have the following meanings.

- (a) Hospice shall mean a hospice as defined in article 40 of the Public Health Law possessing a valid certificate of approval issued by the State Commissioner of Health.
- (b) A routine home care day is a day on which an individual who has elected to receive hospice care is at home and is not receiving continuous care as defined in subdivision (f) of this section.
- (c) A routine home care day for AIDS patients is a day on which an individual who has been diagnosed with Acquired Immune Deficiency Syndrome (AIDS) has elected to receive hospice care, is at home and is not receiving continuous home care as defined in subdivision (f) of this section.
- (d) A routine home care day with an escort is a day as defined in subdivision (b) of this section, when the nurse providing care requires the use of an escort for security when visiting the patient's home.
- (e) A routine home care day for AIDS patients with an escort is a routine home care day as defined in subdivision (b) of this section when the individual who has elected to receive hospice care has been diagnosed with Acquired Immune Deficiency Syndrome (AIDS) and the nurse providing care requires the use of an escort for security when visiting the patient's home.
- (f) A continuous home care day is a day on which an individual who has elected to receive hospice care is not in an inpatient facility and receives hospice care consisting predominantly of nursing care on a continuous basis at home. Home health aide or homemaker services or both may also be provided on a continuous basis. Continuous home care is only furnished during brief periods of crisis, and only as necessary to maintain the terminally ill patient at home. A period of crisis is a period in which the individual requires continuous care to achieve palliation or management of acute medical symptoms.
- (g) A continuous home care day for AIDS patients is a day as defined in subdivision (f) of this section when the patient receiving care has been diagnosed as having Acquired Immune Deficiency Syndrome (AIDS).
- (h) An inpatient respite care day is a day on which the individual who has elected

hospice care receives care in an approved facility on a short-term basis for respite.

(i) A general inpatient care day is a day on which an individual who has elected hospice care receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management which cannot be managed in other settings.

(j) A general inpatient care day for AIDS patients is a day as defined in subdivision (i) of this section, when the patient receiving care has been diagnosed as having Acquired Immune Deficiency Syndrome (AIDS).

(k) Supplemental financial assistance program means the program as established pursuant to section 4012(a) of the Public Health Law to provide additional payments to hospices which provide care to patients with special needs, which shall include patients diagnosed with acquired immune deficiency syndrome or patients in environment situations which require the use of escort services for delivery of routine home care in accordance with approved plans required by subdivision (b) of section 86-6.6 of this Subpart.

(1) Room and board services shall mean the provision of personal care services, including assistance in activities of daily living, socializing activities, administration of medications, maintaining the cleanliness of a resident's room and supervising and assisting in the use of durable medical equipment and prescribed therapies by a nursing facility to an individual who has elected to receive hospice care. Room and board services shall also include the services, activities and allowable costs as set forth in section 86-2.10(d) and (g) of this Subpart.

86-6.2 Hospice rates of reimbursement. (a) Pursuant to 42 USC 1396a (a) (13) (D), rates of reimbursement for hospice shall be in amounts no lower than the amounts used under part A of title XVIII of the Social Security Act. Hospices may be eligible for supplemental rates of payment under the supplemental financial assistance program in accordance with the provisions set forth in section 86-6.6 of this Subpart.

(1) The hospice payment rates are established to reimburse each of the following four specific categories of hospice care:

- (i) routine home care;
- (ii) continuous home care;
- (iii) inpatient respite care; and
- (iv) general inpatient care.

(2) Payment rates under the supplement financial assistance program are established to reimburse each of the following special need categories of hospice care:

- (i) routine home care for AIDS patients;
- (ii) routine home care with escort services;

(iii) routine home care for AIDS patients with escort services;

(iv) continuous home care for AIDS patients;

(v) general inpatient care for AIDS patients.

(b) Except as otherwise stated, each hospice payment rate established pursuant to this Subpart is a prospectively determined per diem amount which has been adjusted consistent with the requirements of 42 USC 1396a (a)(13)(D) to reflect regional variations in wage levels.

(c) Per diem payments shall be for only one of the categories of hospice care listed in either paragraph (1) or paragraph (2) of subdivision (a) of this section for any particular day, provided that payments for continuous home care days will vary depending upon the number of hours of continuous home care provided.

(d) For continuous home care, the rates established pursuant to subdivisions (f) and (g) of this section shall be divided by 24 to yield an hourly rate. The number of hours of continuous home care provided in a given day is then multiplied by the resulting hourly rate to yield a continuous home care payment amount for that day. A minimum of 8 hours of predominantly nursing care must be furnished on a particular day to qualify for the continuous home care reimbursement rate pursuant to this section.

(e) Beginning October 1, 1990 annual adjustments to the hospice payment rates for each category of hospice care established in this section shall be made using trend actors developed by the Commissioner of Health pursuant to section 86-6.5 of this Subsection.

(f) The hospice reimbursement rates for the four standard categories of care for hospices located within the various New York State Standard Metropolitan Statistical Areas (SMSA) and rural areas are as follows:

SMSA Area (Counties Within Area)	*Routine Home Care Rate	*Continuous Home Care Rate	*Inpatient Respite Care Rate		
(1) Albany-Schenectady-Troy (Albany, Greene, Montgomery, Rensselaer, Saratoga, and Schenectady)		\$70.20	\$409.31	\$ 77.64	\$313.61
(2) Binghamton (Broome, Tioga)		73.43	428.14	80.40	326.97
(3) Buffalo (Erie)	74.79	436.07	81.57	332.60	
(4) Elmira (Chemung)	77.24	450.36	83.67	342.74	

(5)	Glens Falls (Warren, Washington)				
		69.71	406.46	77.22	311.58
(6)	Nassau-Suffolk (Nassau, Suffolk)				
		86.81	506.19	91.87	382.38
(7)	New York (Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, Westchester)	94.97	553.75	98.85	416.14
(8)	Niagara Falls (Niagara)				
		69.33	404.27	76.90	310.02
(9)	Orange County (Orange)				
		76.22	444.40	82.79	338.52
(10)	Poughkeepsie (Dutchess)				
		80.69	470.45	86.62	357.04
(11)	Rochester (Livingston, Monroe, Ontario, Orleans, Wayne)				
		77.88	454.07	84.21	345.38
(12)	Syracuse (Madison, Onondaga, Oswego)				
		99.66	581.12	102.87	435.57
(13)	Utica-Rome (Herkimer, Oneida)				
		72.52	422.82	79.62	323.19
(14)	NON-SMSA Area (Rural) Includes Counties Not Covered Above				
		69.20	403.51	76.79	9.~8

* Rates that appear on this schedule shall be effective January 1, 1990 through September 30, 1990. Beginning October 1, 1990 annual adjustments will be made to these rates pursuant to section 86-6.5 of this Subpart.

(g) The reimbursement rates under the Supplemental Financial Assistance Program for the special need categories of care for hospices located within the various New York State Standard Metropolitan Statistical Areas (SMSA) and rural areas are as follows:

SMSA Area		*Routine			
	*Routine	*Routine	Home Care	*Continuous	*General
	Home Care	Home Care	for AIDS	Home Care	Inpatient
	for AIDS	Escort	Patients	for AIDS	for AIDS
	Patients	Services	and Escort	Patients	Patients

(Counties Within Area)

(1) Albany-Schenectady-Troy (Albany, Greene, Montgomery, Rensselaer, Saratoga, and Schenectady)

\$120.53 \$ 86.02 \$136.35 \$439.64 \$348.55

(2) Binghamton (Broome, Tioga)

126.2789.25 142.09467.55363.39

(3) (Erie) Buffalo

128.6990.61 144.51479.32'5

(4) Elmira (Chemung)

133.0493.06 148.86500.52380.92

(5) Glens Falls (Warren, Washington)

119.6685.53 135.48435.40346.29

(6) Nassau-Suffolk (Nassau, Suffolk)

150.06102.63165.88583.32424.98

(7) New York (Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, Westchester)

164.56110.79180.38653.85462.50

(8) Niagara Falls (Niagara)

118.9985.15 134.81432.15344.56

(9) Orange County (Orange)

131.2392.04 147.05491.68'7 23

(10) Poughkeepsie (Dutchess)

139.1896.51 155.00530.3739n.81

(11) Rochester (Livingston, Monroe, Ontario, Orleans, Wayne)

134.1793.70 149.99506.02383.86

(12) Syracuse (Madison, Onondaga, Oswego)

172.90115.48188.72694.44489.09

(13) Utica-Rome (Herkimer, Oneida)

124.6488.34 140.46459.66359.19

(14) NON-SMSA Area (Rural) includes Counties not Covered-

118.7685.02 134.58431.03343.96

*Rates that appear on this schedule shall be effective July 1, 1990 through September 30, 1990. Beginning October 1, 1990 annual adjustments will be made to these rates pursuant to section 86-6.5 of this Subpart.

(h) The hospice rates of reimbursement set forth in this section are subject to the approval of the State Director of the Budget.

86-6.3 Reimbursement for attending and consulting physician services.

Reimbursement for attending and consulting physician services rendered to hospice patients shall be in accordance with the Medicaid fee schedule set forth in this title, as amended pursuant to chapter 904 of the Laws of 1984. The current fee schedule is set forth in section 7.0 of the Medicaid Management Information System Provider Manual, Physicians (Revised January 1985). Copies of this schedule may be obtained from the Bureau of Program, Policy and Operations of the Division of Medical Assistance of the New York State Department of Social Services, 40 North Pearl Street, Albany, NY 12243. The current physicians fee schedule is available for inspection and copying at the Department of Health Records Access Office, 10th Floor, Corning Tower Building, Nelson A. Rockefeller Empire State Plaza, Albany, NY 12237.

86-6.4 Reporting requirements. (a) Each hospice provider shall complete and file with the New York State Department of Health and/or its agent, financial and statistical reports as deemed necessary by the Commissioner of Health on forms supplied by the department. The instances where the hospice is a component part of a larger organization, the cost and statistics related to the operation of the hospice shall be separately maintained from the operator's other activities.

(b) Completion of such financial and statistical reporting forms shall be in accordance with generally accepted accounting principles as applied to the hospice, unless the reporting instructions authorize specific variation in such principles.

86-6.5 Trend factor. (a) The commissioner shall establish trend factors to project annual increases in the costs of hospice services. Each payment rate for the categories of hospice care, as established pursuant to the provisions of section 86-6.2 of this subpart, shall be trended each year by the trend factors developed in accordance with the provisions of this section.

(b) The elements of certified home health agencies' costs shall be weighted based upon data for the categories listed below in developing the trend factor that will be applied to the routine and continuous home care rates. The elements of general hospitals' costs shall be weighted based upon data for the categories listed below in developing a trend factor that will be applied to the inpatient and respite care rates:

- (1) salaries;
- (2) employee health and welfare expense;
- (3) nonpayroll administrative and general expense;
- (4) nonpayroll household and maintenance expense;
- (5) nonpayroll professional care expense.

(c) Each weight shall be adjusted by one or more price indices. Included among these indices are elements of the United States Department of Labor consumer and produce price indices and special indices developed by the commissioner for this purpose.

(d) The projected trend factors shall be updated on an annual basis, based upon current and available data. The commissioner shall adjust subsequent trend factors based upon such update.

86-6.6 Supplemental financial assistance program. (a) The supplemental financial assistance program provides enhanced payments to patients with special needs as defined in subdivision (k) of section 86-6.1 of this Subpart using payment rates established pursuant to subdivision (g) of section 86-6.2 of this Subpart.

(b) To receive the enhanced Medicaid payment rates as set forth in section 86-6.2(g) of this Subpart, a hospice must:

(1) meet all certification requirements pursuant to Article 40 of the Public Health Law;

(2) continue efforts to obtain financial support from public and community funding sources;

(3) make a reasonable effort to collect payments for services from third party insurance payers, governmental payers and self paying patients;

(4) establish a reasonable relationship between costs and charges, or establish charges at approximate costs; and

(5) with respect to the enhanced payment rates for escort services, provide the commissioner with an acceptable written plan explaining how escort services will be used by each agency which may be billing the routine home care rates with escort.

(c) The provisions set forth in this section, sections 86-6.1(k) and 86-6.2(g) of this Subpart shall expire and be deemed to have no further force or effect on and after July 1, 1995.

86-6.7 Hospice reimbursement for room and board provided to patients residing in a nursing facility. (a) Daily payment will be made to a hospice for Medicaid eligible patients who have elected the hospice benefit and reside in a nursing facility (see 42 USC 1396a[a] [13] [D]). Payment shall be made for a hospice patient to take into account the room and board furnished by the nursing facility and will be in an amount equal to 95 percent of the facility rate that would have been paid by the State to the facility in accordance with the applicable provisions of Subpart 86-2 of this Part, if the patient had not elected to receive hospice care. A hospice cannot bill for this additional amount on a day in which the patient who has

elected hospice care is receiving other general inpatient or inpatient respite care. Patients covered under provisions set forth in this section must be patients who would be eligible under Medicaid for nursing facility services if he/she had not elected to receive hospice care.

(b) To be eligible to receive Medicaid payment as set forth in subdivision (a) of this section, a hospice must have a written agreement with a nursing facility under which the hospice takes full responsibility for the professional management of the patient's hospice care, and the nursing facility agrees to provide room and board to the patient, collect any patient payment contributions, and maintain an accounting of the patient's financial contribution.

NEW YORK ADMINISTRATIVE CODE, part 10

CHAPTER III POLICY, CERTIFICATE PROVISIONS

52.27 Rules relating to the sale of health insurance and settlement of health insurance claims. The following are limitations affecting the underwriting, rating or administration of claims relating to policies or contracts providing hospital and/or medical expense or indemnity benefits. No insurer shall when underwriting, rating or administering claims relating to such policies or contracts:

- (a) request any applicant to submit to a body fluid test for evidence of human immunodeficiency virus (HIV), antibodies to or antigens of the probable causative agent of acquired immune deficiency syndrome (AIDS);
- (b) request of any applicant or insured whether they have obtained a body fluid test for evidence of human immunodeficiency virus (HIV), antibodies to or antigens of the probable causative agent of acquired immune deficiency syndrome (AIDS) or the result of such test; or
- (c) Consider or use the result of any body fluid test for evidence of human immunodeficiency virus (HIV), antibodies to or antigens of the causative agent of acquired immune deficiency syndrome (AIDS), regardless of the sources of or method used to obtain such result.

CHAPTER X ALCOHOLISM

PART 309

RESPONSIBILITIES OF FACILITIES FOR ALCOHOLISM IN REGARD TO AIDS, HIV ILLNESS AND HIV-RELATED INFORMATION

Section 309.1 Applicability. This Part applies to all alcoholism facilities, al-

coholism outpatient facilities and community residences whether operated or certified by the Division of Alcoholism and Alcohol Abuse and any staff member, contractor, employee, associate or agent thereof. Any such facility which is a unit or part of a hospital shall also conform to related regulations of the Commissioner of Health to the extent compliance is allowed by Federal confidentiality regulations.

309.2 Definitions. (a) Facility means an alcoholism facility, alcoholism outpatient facility or community residence operated or certified by the Division of Alcoholism and Alcohol Abuse.

(b) HIV infection means infection with the human immuno-deficiency virus or any other agent identified as a probable causative agent of AIDS.

(c) HIV-related illness means any clinical illness that may result from or 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 HIV-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 facility or staff member thereof concerning whether an individual has been the object 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) 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.

(i) Case record for purposes of this Part, means the patient case record including medical information maintained by a facility about a protected individual regardless of where or in what form such information is maintained.

(j) Federal confidentiality regulations means 42 CFR 2 or any successor or additional Federal regulations governing the confidentiality of alcohol patient information.

(k) Significant risk of contracting or transmitting HIV infection means the presence of the three factors necessary to create a significant risk of contracting or transmitting HIV infections which are: 1) the presence of a significant risk body substance; 2) a circumstance which constitutes significant risk; and 3) the presence of an infectious source and a noninfected person.

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

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

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

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

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

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

(v) other circumstances not identified in subparagraphs (i) through (iv) of this paragraph during which a significant body 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, needlestick or puncture wound injuries and direct saturation or permeation of these body surfaces by the infectious body substance.

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

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

(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 preventive practices in circumstances which would otherwise pose a significant risk.

309.3 Nondiscrimination. (a) No facility shall deny admission to, terminate care and/or treatment, change the status of, limit or otherwise reduce the range, quality or variety of alcoholism services to any person solely on the basis of that person's actual, presumed, or alleged HIV-related condition or status.

(b) No facility shall condition admission, continuation of services or provision of any needed service on an agreement by the individual to obtain an HIV-related test or to disclose the results of any such test conducted in the past or which may be conducted in the future.

309.4 HIV-related testing. (a) Each facility which provides or has arrangements for performing laboratory tests shall specify in its policy and procedure those individuals on staff who are authorized pursuant to law to order laboratory tests.

(b) If a patient indicates an interest in obtaining an HIV-related test, he or she shall be provided the location and telephone number of the nearest HIV testing site where he or she may obtain an anonymous test. If access to an anonymous HIV testing site is not readily available, the person shall be referred to a convenient, accessible source of confidential testing.

(c) If the individual rejects the offered referral for anonymous testing and requests the facility to provide testing, the person shall be provided an appointment with a facility physician or with a staff person appointed to handle such requests if a physician is not available.

(1) The physician or other staff person shall repeat the offer of referral for anonymous testing, but if the patient continues to request that the facility provide the test, the physician may order the test in accordance with the requirements of this Part.

(2) If, after the circumstances in which testing can be provided are explained, the patient declines to participate in testing under the circumstances available, no test shall be ordered.

(d) Except as noted in subdivision (g) of this section, no physician or other staff person may order an HIV-related test without obtaining written informed consent of the subject.

(e) Informed consent shall consist of providing the following 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:

(1) explanations regarding the nature of AIDS and HIV infection and HIV-related illness, an explanation of the test and procedures to be followed and the meaning of test results, and the benefits of taking the test including early diagnosis and medical intervention;

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

disclosures;

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

(4) an explanation that the test is voluntary, that consent may be withdrawn at any time, that anonymous testing is available and how an anonymous test may be obtained, and the location and telephone number of anonymous test sites and that anonymous testing is not available for persons proposed for insurance coverage.

(f) The written informed consent must be executed by the subject on the form established or approved by the Department of Health.

(g) informed consent is not required under these regulations in the following circumstances:

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

(2) if otherwise 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; and

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

Informed consent may be required under Federal regulations, however, if Federal regulations are applicable.

(h) Post-test 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.

(i) The physician or other person authorized by law to order an HIV-related test shall certify on the laboratory requisition form that written informed consent has been obtained.

309.5 Disclosure of HIV-related information. (a) No HIV-related information shall be disclosed pursuant to a general release, or, when applicable, a specific consent to disclosure obtained in accordance with Federal confidentiality regulations. Each release of HIV-related information shall be accompanied by a specific completed consent form for the release of HIV-related information which is signed by the protected individual or, when applicable, by the person authorized by law to consent to health care for the individual. The form used for such consent shall be one established or approved by the Department of Health for such purpose.

(b) If any disclosure authorized by this section is prohibited by applicable Federal confidentiality regulations, the Federal regulations shall govern. If a facility desires to release HIV-related information and appropriate consent cannot be obtained, the facility may not release the information unless it has applied for and received a court order, consistent with both the Federal confidentiality regulations and section 2785 of the Public Health Law.

(c) The consent of the protected individual is a confidential record in accordance with the Federal confidentiality regulations when they apply.

(d) The facility shall minimize the number of and types of staff who have access to HIV-related information in case records as required by section 309.5 of this Part.

(e) All requests for disclosure of HIV-related information shall be handled by qualified professional staff responsible for the treatment of the patient and decisions regarding disclosure shall be made only by professional staff.

(f) Requests for disclosure of HIV-related information which originate outside the facility must be accompanied by a properly completed consent to disclose alcoholism and drug treatment information, when the Federal confidentiality regulations apply, in addition to a proper consent to release HIV-related information unless the requestor is the protected individual. If the Federal confidentiality regulations apply and a proper consent is not present, the Federal regulations must be followed in advising the requestor of the Federal requirements.

(g) All written disclosures of confidential HIV-related information must be accompanied by a statement prohibiting redisclosure.

(1) 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.

(2) The HIV-related information accompanied by the foregoing prohibition on redisclosure must also be accompanied by a statement prohibiting redisclosure of alcoholism patient information, when required by Federal confidentiality regulations.

(h) No person who obtains confidential HIV-related information in the

course of providing any service or pursuant to a release of confidential HIV-related information may disclose or be compelled to disclose such information, except to the following; and, when applicable, any such disclosure shall be in accordance with the Federal confidentiality regulations:

- (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 this Part;
- (3) an agent or employee of the facility authorized by facility policy pursuant to section 309.8 of this Part;
- (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 individual or a child of the individual;
- (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) accreditation or oversight review organizations authorized to access case records for audit and evaluation purposes, provided that such organizations may only disclose confidential HIV-related information:
 - (i) back to the facility;
 - (ii) to carry out the monitoring evaluation or service reviews for which it was obtained; or
 - (iii) to a governmental agency or to authorized employees or agents of a governmental agency pursuant to the regulations of the governmental agency when reasonably necessary for supervision, monitoring, administration or provision of services;
- (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 children for adoption or foster care, in connection with foster care or adoption of a child. Such agency shall be authorized to disclose 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 procured by the provider;
- (10) an insurance institution, for other than the purpose set forth in paragraph (9) of this subdivision, provided the insurance institution has secured dated and written authorizations that indicate that a health care provider, a health facility, another insurance institution, or another person is authorized to disclose to the insurance institution 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; or

(13) a medical director of a local correctional facility in accordance with regulations promulgated by the facility operator. Redisclosure by the medical director is prohibited except as permitted under Public Health Law, article 27-F and its implementing regulations.

(i) A physician may disclose the confidential HIV-related information during contact notification pursuant to section 309.8 of this Part.

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

(k) Confidential HIV-related information may be disclosed to a governmental agency or to authorized employees or agents of the division or another governmental agency when the facility is regulated by the governmental agency 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.

(l) 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.

(m) 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 Public Health Law and required to implement infection control procedures pursuant to Department of Health regulations,

(n) Confidential HIV-related information shall not be released pursuant to a subpoena. A court order pursuant to Public Health Law, section 2785 and Federal confidentiality regulations, when applicable, is required.

309.6 Documentation of HIV-related information and disclosures. (a) All disclosures of confidential HIV-related information must be noted in the record, except

- (1) only initial disclosures to insurance institutions must be noted;
 - (2) notation is not required for disclosure to authorized agents or employees of the facility; and
 - (3) notation is not required of disclosures to persons engaged in quality assurance, program monitoring or evaluation, nor for governmental payment agents acting pursuant to contract or law.
- (b) The protected individual shall be informed of disclosures of HIV-related information upon his or her request.
- (c) Confidential HIV-related information shall not be disclosable pursuant to the Public Officers Law, article 6, the Freedom of Information Law.

309.7 Contact notification. (a) A facility physician whose practice is not limited to employment by alcoholism and/or drug abuse treatment facilities or any physician in a facility to which the Federal confidentiality rules do not apply 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;
 - (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;
 - (3) the identity of the protected person is not to be disclosed to the contact; and
 - (4) the physician's association with an alcoholism facility is not disclosed to the contact.
- (b) If the physician's practice is limited to employment in alcoholism and/or drug abuse facilities and the Federal confidentiality rules apply, the physician may disclose HIV-related information to a contact or health officer only if he or she or the facility obtains a court order authorizing disclosure as required by the Federal confidentiality regulations.
- (c) The physician must inform the protected person of the physician's intent to disclose, provide the protected individual an opportunity to express a preference as to whether the physician or a public health officer will notify the contact and comply with the protected individual's choice. All notification shall be in person, except where circumstances reasonably prevent doing so.
- (d) When making contact notification the physician shall provide or make provision for appropriate medical advice, emotional counseling and education about contracting or transmitting HIV infection.
- (e) The physician making contact notification shall not disclose the identity of the protected individual or any other contact.
- (f) A physician shall have no obligation to identify or locate any contact.

309.8 Policy and procedure. (a) Each facility shall develop and implement by July 1, 1989, written policies and procedures regarding HIV testing and confidentiality of HIV-related information.

(b) Policies and procedures shall assure that responses to patient interest in testing, requests for testing, counseling related to testing when testing is provided, confidentiality and disclosure of HIV-related information, prevention of contracting or transmitting HIV infection, contact notification and any other matters prescribed by this Part are carried out in accordance with the provisions of this Part.

(c) (1) Policies of the facility shall be established and maintained in writing to minimize the number and types of facility employees or agents who have access to HIV related information in case records and shall include agents or employees of the facility who:

(i) are authorized to access case records for other than HIV-related purposes; and

(ii) provide direct care to protected individuals; or

(iii) process case records for billing or reimbursement purposes except that no record maintained solely for billing or reimbursement purposes shall contain confidential HIV-related information; or

(vi) are program directors or clinical supervisors of direct care staff serving protected individuals; or

(v) are attorneys providing legal services to the facility and access is reasonably necessary for supervision, monitoring, administration or provision of services; or

(vi) are members of facility staff committees performing audit and evaluation functions as long as such committee members disclose confidential HIV-related information only to facility staff otherwise eligible to access it and as necessary to carry out the monitoring, evaluation or review functions assigned.

(2) These policies shall include a list of job titles and specific employee functions within those titles for which employees are authorized to access HIV-related information in case records.

(3) Policies must describe the limits of such access to information.

(4) Policies must prohibit disclosure of HIV-related information by any facility employee or agent except as provided in this Part.

(5) Policy must prohibit all access to HIV-related information by any employee or agent who has not received education and training regarding confidentiality of HIV related information.

(6) Policy and procedures shall require that each employee or agent of the facility who is authorized access to the case records of protected individuals must be advised in writing by his or her supervisor that the employee shall not:

(i) examine documents or computer data containing HIV-related information unless required to in the course of his or her 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 document or computer data with any person unless that person is authorized access to such document or data;

(iv) disclose the alcoholism patient status of the patient unless necessary and in compliance with Federal confidentiality regulations, when applicable, when HIV related information is properly disclosed pursuant to this Part; and

(v) disclose HIV-related information unless necessary and in compliance with this Part when alcoholism treatment information is properly disclosed.

(7) Policy and procedure shall require that each employee or agent authorized to access confidential HIV-related information in case records shall sign a statement that he or she has read the above restrictions.

(i) Such statement shall also specify that the employee or agent understands that violation may lead to disciplinary action, including suspension or dismissal and that violation may be against New York State law and lead to arrest and criminal prosecution.

(ii) A copy of such statement shall be provided to the employee or agent and the original shall be filed in the individual's personnel record.

(d) A facility which contracts with another organization for management, services, and/or staff shall ensure, by terms of the contract, that all staff of such contractor is aware of the requirements of this Part, contractor's staff is authorized access to HIV-related information only in accordance with facility policy as required by this section, and that such staff are provided training and education consistent with the requirements of section 309.9 of this Part.

(e) Policy and procedure shall ensure that records, including records that are stored electronically, are maintained securely.

(f) Policy and procedures shall specify procedures for handling requests for HIV-related information by outside parties which shall conform to the requirements of this Part and, when applicable, Federal confidentiality regulations.

(g) Each facility shall establish an infection control plan which is appropriate for the services provided, and, at a minimum, includes the following:

(1) Prevention of circumstances which could result in an employee or patient becoming exposed to a significant risk body substance including but not limited to:

(i) use of scientifically accepted preventive barriers during job-related activities which involve, or may involve, exposure to significant risk body substances. Such preventive actions shall be taken by the employee with each patient as an essential element for the prevention of bi-directional spread of HIV; and

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

(2) A system for monitoring preventive activities to assure compliance and safety.

(3) Procedures for the management of any individual who is exposed to a significant risk body substance under circumstances which constitute significant risk of transmitting or

contracting HIV infection. These procedures shall include:

- (i) a system for reporting to a designated individual in the facility any circumstance which constitutes significant risk of contracting or transmitting HIV infection;
- (ii) a system for evaluating the circumstances of a reported exposure and procedures for appropriate medical and epidemiological follow-up services for the exposed individual. Any disclosure of HIV-related information related to exposures must comply with section 309.5 of this Part; and
- (iii) a system to protect the confidentiality of those involved in reported exposures.

309.9 HIV-related staff training and education. (a) Training and orientation of new employees shall include:

- (1) Information regarding the legal prohibitions against unauthorized disclosure.
 - (2) Instruction in the use of protective equipment and preventive practices and recognition of circumstances which represent significant risk of contracting or transmitting HIV infection.
 - (3) Information on facility policy and procedure established pursuant to this Part.
- (b) All employees shall be provided retraining on the material specified in subdivision (a) of this section at least annually.
- (c) Initial orientation and annual retraining as provided by this section shall also be provided to employees of any other organization providing management, services or staff by contract whose staff is authorized access to HIV-related information in case records.
- (d) The facility shall maintain a list of all its staff members and, when applicable contractors' staff members, who have received the training required by this section.
- (e) All employees shall be provided the training required by this section by July 1, 1989 and all employees hired thereafter shall be provided this training as part of their initial orientation.

309.10 Intra-division confidentiality. (a) No employee or agent of the Division of AIDS alcoholism and Alcohol Abuse shall have access to information relating to any identified person receiving services, including confidential HIV-related information, except in connection with the following activities:

- (1) investigation of any alleged violation of the patient's rights of a protected individual, including allegations of discrimination, abuse or neglect;
- (2) review of the quality of care rendered and compliance with regulations by a facility;
- (3) as reasonably necessary to determine eligibility for services or for reimbursement or services;

(4) approved scientific or epidemiologic studies and research which will not maintain or disclose identification of the protected individual;

(5) as necessary in order to fulfill explicit statutory responsibilities;

(6) as related to the delivery of services to protected individuals in State-operated alcoholism facilities. In these facilities, disclosure of HIV-related information shall be restricted as provided by this Part and the Federal confidentiality regulations,

(b) No employee or agent of the division 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 this Part.

(c) The supervisor of each organizational unit in which personnel have access to information relating to an identified person, including confidential HIV-related information, shall prepare and submit to the records access office a description of the unit's protocol for ensuring the confidentiality of such information in the ordinary course of business. These protocols shall include, at a minimum:

(1) procedures to ensure that letters, memoranda and other documents containing information relating to an identified person, including confidential HIV-related information, are accessible only to authorized personnel;

(2) measures to ensure that information relating to an identified person, including confidential HIV-related information stored electronically, is protected from access by unauthorized persons;

(3) a training program for all employees authorized access to information relating to an identified person and confidential HIV-related information that acquaints them with how to protect such information in the course of day-to-day business; and

(4) measures to protect the confidentiality of records of an identified person, including HIV-related information, being transferred to other authorized personnel within the division or other State agencies.

(d) Each employee who is authorized access to the records of an identified person, including confidential HIV-related information, shall be advised in writing by the supervisor that the employee shall not:

(1) examine documents or computer data containing such information unless required to in the course of his or her official duties and responsibilities;

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

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

(e) Each employee who has access to information related to an identified person shall sign a statement attesting that he or she has read the above restrictions and stating that he or she understands that violation may lead to disciplinary action, including suspension or dismissal

from employment and that such violation may be against New York State law and lead to arrest and criminal prosecution.

NEW YORK ADMINISTRATIVE CODE, part 11

TITLE 18, SOCIAL SERVICES

505.21 Long term home health care programs; AIDS home care programs. (a) Definitions.

Long term home health care program (LTHHCP) means a coordinated plan of care and services provided at home to invalid, infirm or disabled persons who are medically eligible for placement for an extended period of time in a hospital or residential health care facility (RHCF) if the LTHHCP were unavailable. Such program can be provided in the person's home, including an adult care facility other than a shelter for adults, or in the home of a responsible relative or other responsible adult.

(2)(i) AIDS home care program (AHCP) means a coordinated plan of care and services provided at home to persons who are medically eligible for placement in a hospital or an RHCF and who are diagnosed by a physician as having acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) related illness as defined by the AIDS Institute of the State Department of Health. Such definitions are contained in directives issued by the department from time to time.

(ii) An AHCP can be provided only by a LTHHCP provider specifically authorized under article 36 of the Public Health Law to provide an AHCP as a discrete part of the LTHHCP.

(iii) An AHCP can be provided in the person's home, which includes an adult care facility specifically approved to admit or retain residents for such program, the home of a responsible relative or other responsible adult, or in other residential settings as approved by the Commissioner of Health in conjunction with the Commissioner of Social Services.

(3) Government funds means funds provided under the provisions of title 11 of article 5 of the Social Services Law (medical assistance to needy persons).

(b) Assessment and authorization.

(1) (i) If a LTHHCP, as defined under article 36 of the Public Health Law, is provided in the social services district for which he or she has authority, the local social services official, before he or she authorizes care in an RHCF, must notify the person in writing of the availability of the LTHHCP.

(ii) If an AHCP, as defined under article 36 of the Public Health Law, is

provided in the social services district for which he or she has authority, the local social services official, before authorizing RHCF care, home health services, or personal care services for a person with AIDS, must notify the person in writing of the availability of the AHCP. If the person desires to remain and is deemed by his or her physician able to remain in his or her own home if the necessary services are provided, such person or his or her representative must so inform the local social services official, who must authorize an assessment under the provisions of section 3616 of the Public Health Law and paragraph (2) of this subdivision. If the results of the assessment indicate that the person can receive the appropriate level of care at home, the official must prepare for that person a plan for the provision of services comparable to services that would be rendered in a hospital or an RHCF, as appropriate for the person. In developing such plan, the official must consult with those persons performing the assessment and must assure that such plan is appropriate to the person's needs and will result in an efficient use of services.

(2) If a person who has been assessed in accordance with section 505.9(b) of this Part by a LTHHCP or an AHCP, a physician or discharge planner or, at the option of the social services district, another certified home health agency, as needing care in an RHCF or a hospital, desires to remain and is deemed by his or her physician able to remain in his/her own home or the home of a responsible relative or other responsible adult or an adult care facility, other than a shelter for adults, if the necessary services are provided and, for purposes of an adult care facility, the person meets the admission and continued stay criteria for such facility, the social services district must authorize a home assessment of the appropriateness of LTHHCP or AHCP services. The assessment must include, in addition to the physician's recommendation, an evaluation of the social and environmental needs of the person. The assessment will serve as a basis for the development of an appropriate plan of care for the person.

(i) If the person is in a hospital or an RHCF, the home assessment must be performed by the person's physician, the discharge coordinator of the hospital or RHCF referring the person, a representative of the social services district, and a representative of the LTHHCP or AHCP that will provide services to the person.

(ii) If the person is in his/her own home, the home assessment must be authorized by the social services district and must be performed by the person's physician, a representative of the social services district, and a representative of the LTHHCP or AHCP that will provide services to the person.

(iii) The assessment must be completed prior to or within 30 days after the provision of services begins. Payment for services provided prior to the completion of the assessment may be made only if it is determined, based

upon such assessment, that the person qualifies for such services.

(iv) If the person is in an adult care facility, the home assessment must be performed by representatives of the LTHHCP or AHCP and the social services district in consultation with the operator of the adult care facility.

(v) Persons provided LTHHCP or AHCP services in adult care facilities must meet the admission and continued stay criteria for such facilities.

(vi) For persons requesting LTHHCP or AHCP services in adult care facilities assessments must be completed prior to the provision of services.

(vii) Services provided by the LTHHCP or AHCP must not duplicate or replace those which the adult care facility is required by law or regulation to provide.

(viii) The commissioner must prescribe the forms on which the assessment will be made.

(3) If there is disagreement among the persons performing the assessment, or questions regarding the coordinated plan of care, or problems in implementing the plan of care, the issues must be reviewed and resolved by a physician designated by the Commissioner of Health.

(4) At the time of the initial assessment, and at the time of each subsequent assessment performed for a LTHHCP, or more often if the person's needs require it, the social services district must establish a monthly budget in accordance with which payment will be authorized. The social services district must provide the operator of the adult care facility with a copy of the completed assessment, the plan of care and the monthly budget.

(i) For persons who neither reside in adult care facilities nor receive AHCP services:

(a) The budget must include all of the services to be provided in accordance with the coordinated plan of health care by the LTHHCP.

(b) Total monthly expenditures made for a LTHHCP for a person who is the sole member of his/her household in the program must not exceed a maximum of 75 percent of the average monthly rates payable for RHCF services in the social services district. Total monthly expenditures made for a LTHHCP for two members of the same household must not exceed a maximum of 75 percent of the average monthly rates payable for both members of the household for RHCF services in the social services district.

(c) When the monthly budget prepared for a person who is the sole member of his/her household in the program is for an amount less than 75 percent of monthly rates payable for RHCF services, a "credit" may be accrued on behalf of the person. If a continuing assessment of the person's needs demonstrates that he/she requires increased services, the social

services district may authorize any amount accrued during the past 12 months over the 75-percent maximum. When the monthly budget prepared for two members of the same household is for an amount less than 75 percent of monthly rates payable for RHCF services, a "credit" may be accrued on behalf of the household. If a continuing assessment of the household's needs demonstrates that the household requires increased services, the social services district may authorize any amount accrued during the past 12 months over the 75-percent maximum.

(d) When the monthly budget prepared for a person or a household is for an amount less than 75 percent of monthly rates payable for RHCF services and the continuing assessment of the person's or household's needs demonstrates that the person or household requires increased services in an amount less than 10 percent of the prepared monthly budget, but totaling no more than 75 percent of the monthly rates payable for RHCF services, the LTHHCP may provide such services without prior approval of the social services district.

(e) If an assessment of the person's or household's needs demonstrate that the person or household requires services, the payment for which would exceed such monthly maximum, but it can be reasonably anticipated that total expenditures for required services for such person or household will not exceed such maximum calculated over a one-year period, the social services official may authorize payment for such services.

(ii) For persons residing in adult care facilities but not receiving AHCP services:

(a) The budget must include all of the services to be provided in accordance with the coordinated plan of health care by the LTHHCP.

(b) Total monthly expenditures made for LTHHCP services provided to a person residing in an adult care facility must not exceed a maximum of 50 percent of the average monthly rates payable for RHCF services in the social services district.

(c) When the monthly budget prepared for a person residing in an adult care facility is for an amount less than 50 percent of the average of the monthly rates for RHCF services, a "credit" may be accrued on behalf of the person. If a continuing assessment of the person's needs demonstrates that he/she requires increased services, the social services district may authorize the expenditure of any amount accrued during the past 12 months provided that such amount, when added to the amount previously expended, does not exceed the 50 percent maximum.

(d) When the monthly budget prepared for a person residing in an adult care facility is less than 50 percent of the monthly rates payable for RHCF services, and the continuing assessment of the person's needs demonstrates

that he/she requires increased services in an amount less than 10 percent of the prepared monthly budget, but totaling no more than 50 percent of the monthly rates payable for RHCF services, the LTHHCP may provide such services without prior approval of the local social services district.

(e) If an assessment of the needs of an adult care facility resident demonstrates that services are required, the payment for which would exceed the monthly maximum specified in clause (b) of this subparagraph, but it can be reasonably anticipated that total expenditures for required services for such person will not exceed such maximum calculated over a one-year period, the social services official may authorize payment for such services.

(iii) For persons receiving AHCP services, total monthly expenditures for such services are not subject to the requirements of subparagraph (4)(i) or (ii) of this subdivision.

(5) If a joint assessment by the social services district and the provider of services under this paragraph indicates that the maximum expenditure permitted under paragraph (4) of this subdivision is not sufficient to provide LTHHCP services to persons with special needs, social services officials may authorize, pursuant to the provisions of section 367-c(3-a) of the Social Services Law, maximum monthly expenditure for such persons, not to exceed 100 percent of the average RHCF rate established for that district. In addition, if a continuing assessment of a person with special need demonstrates that he/she requires increased services, a social services official may authorize the expenditure of any amount which has accrued under this section during the past 12 months as a result of the expenditures for a person participating in the LTHHCP not having exceeded such maximum. If an assessment of a person with special needs demonstrates that he/she requires increased services, the payment for which would exceed such monthly maximum, the social services official may authorize payment for such services if it can reasonably be anticipated that the total expenditures for the required services for such a person will not exceed the maximum calculated over a one-year period.

(i) As used in this subdivision, the term person with special needs means a person for whom a plan of care has been developed pursuant to subdivision 2 of section 367.c of the Social Services Law:

(a) who needs care including but not limited to respiratory therapy, tube feeding, decubitus care or insulin therapy which cannot be appropriately provided by a provider of personal care services as defined in section 505.14(d) of this Part or

(b) who has one or more of the following conditions: a mental disability as defined in section 1.03 of the Mental Hygiene Law, acquired immune deficiency syndrome, or dementia, including Alzheimer's disease.

(ii) The number of persons with special needs for whom a social services office may authorize payment for services pursuant to this paragraph is limited to 5 percent of the total number of LTHHCP clients which a social services district is authorized to serve; provided that in any district containing a city having a population of one million or more, such limit is 15 percent.

(iii) In the event that a district reaches the limitation specified in this subparagraph, the social services official may, upon approval by the commissioner, authorize payment for services pursuant to this subdivision for additional persons with special needs.

(iv) The social services official must seek approval for authorization to serve additional persons with special needs by submitting a written request to the commissioner which demonstrates that the provisions of this paragraph have (a) met the needs of individuals who could not otherwise be served through the LTHHCP; (b) diverted clients from residential health care facility admission; or (c) permitted the admission of clients on alternate care status into the LTHHCP.

(v) Social services districts are responsible for the retention of information deemed necessary by the department to evaluate the effectiveness of raising the limitation on expenditures for the delivery of long term home health care service and for compliance with reporting requirements established by the department.

(vi) The provisions of this paragraph remain in effect until December 31, 1993.

(6) When a person who is in a hospital or an RHCF is identified as being medically eligible for hospital or RHCF care, and who desires to return to his/her own home and is deemed by his/her physician as able to be cared for at home, an assessment must be completed, and authorization for LTHHCP or AHCP services or notification that the person is ineligible for such program must be timely made with respect to ensuring continued Federal reimbursement.

(7) The social services district is responsible for the general case management of the overall needs of the person. Case management includes:

(i) facilitating determination of financial eligibility for medical assistance;

(ii) involvement in the assessment and reassessment of the social and environmental needs of the person;

(iii) preparation of the monthly budget for persons other than those receiving AHCP services; and

(iv) coordination of LTHHCP or AHCP services and other social services which

may be required to keep the person in his/her own home.

(8) No single authorization for LTHHCP or AHCP services may exceed four months.

(i) A reassessment must be performed at least every 120 days, and must include an evaluation of the medical, social and environmental needs of the person, and must include a representative of the LTHHCP or AHCP, a representative of the social services district, and a physician designated by the Commissioner of Health. If there is a change in the person's level of care, he/she must be notified in writing of such change.

(ii) If a change in the person's level of care occurs between assessment periods as recommended by the LTHHCP or AHCP, the social services district must be notified and a new assessment must be authorized.

(c) Requirements for provision of care. (1) Home health aide services may be provided directly by a LTHHCP or by an AHCP, or through contract arrangements between the LTHHCP or AHCP and voluntary agencies or proprietary agencies.

(2) Personal care services may be provided directly by a LTHHCP or an AHCP, or through contract arrangements between the LTHHCP or AHCP and the social services district or voluntary or proprietary agencies.

(3) In addition to providing nursing services to the person receiving LTHHCP or AHCP services, the LTHHCP's or AHCP's registered professional nurse or professional therapist must also be assigned responsibility for the supervision of the person providing personal care services to evaluate the person's ability to carry out assigned duties, to relate well to persons receiving LTHHCP or AHCP services, and to work effectively as a member of a team of health workers. This supervision must be carried out during periodic visits to the home in accordance with policies and standards established by the Department of Health.

(4) Services of a registered professional nurse or professional therapist and supervision of persons providing personal care services may be carried out concurrently. The frequency of periodic visits must be determined by the coordinated plan of care, but in no case may they be less frequent than every 120 days.

(d) Payment. (1) Payment for a LTHHCP or an AHCP must be at rates established for each service for each agency authorized to provide the program. Rates must be on a per-visit basis, or, in the case of home health aide services and personal care services, on an hourly basis.

(2) (i) When personal care services are directly provided by a LTHHCP or an AHCP, or when they are provided through contract arrangements with an

agency that does not have a rate negotiated with the social services district, the Department of Health will establish the rate of payment with the approval of the Department of Social Services and the Director of the Budget.

(ii) When personal care services are provided by a LTHHCP or an AHCP through contract arrangements with a social services district, computation of the budget must be based on the district's salary schedule, but no payment may be made to the LTHHCP or AHCP.

(iii) When personal care services are provided by a LTHHCP or an AHCP through contract arrangements with an agency that has a rate negotiated with the social services district, the LTHHCP or AHCP rate must be no higher than that locally negotiated rate.

(3) Payment for assessment for a LTHHCP or an AHCP:

(i) is included in the hospital rate for staff participation in discharge planning;

(ii) is included in the physician's visit fee if the physician is not on the hospital staff, and performs the initial assessment while the person is in the hospital;

(iii) is included in the physician's home visit fee when the initial assessment or reassessment is performed in the person's home;

(iv) is included in the physician's office visit fee when the initial assessment or reassessment is performed in a nonfacility- related physician's office; and

(v) is included in the clinic fee when the initial assessment or reassessment is performed in a clinic or outpatient department.

(4) LTHHCP or AHCP participation in initial assessment and reassessment must be included in the administrative costs of the program.

(5) No social services district may make payments pursuant to title XIX of the Federal Social Security Act for benefits available under title XVIII (Medicare) of such Act without documentation of the following:

(i) that the LTHHCP or AHCP has prepared written justification for not having made application for Medicare because of the person's apparent technical ineligibility; or

(ii) that application for Medicare benefits has been rejected by either the Health Care Financing Administration or its fiscal intermediary.

(6) No social services district may make payment for a person receiving LTHHCP or AHCP services while payments are being made for that person for inpatient care in an RHCF or a hospital.

(e) Reimbursement. State reimbursement shall be available for expenditures made in accord with the provisions of this section.

505.22 Shared health facilities. (a) A shared health facility means any arrangement or operation for the delivery of medical or health care, or services meeting the criteria set forth in subdivision 2 of section 4702 of the Public Health Law, as implemented by appropriate sections of 10 NYCRR Part 83 (regulations of the State Department of Health).

(b) Effective September 1, 1977, providers and purveyors who engage in any arrangement or operation for the delivery of medical or health care or services in facilities which have been determined by the State Department of Health, pursuant to the provisions of article 47 of the Public Health Law or 10 NYCRR Part 83, to be a shared health facility will be reimbursed only if that shared health facility is currently registered with the State Department of Health.

(c) Effective September 1, 1977, shared health facilities participating in the medical assistance program shall be operated in compliance with 10 NYCRR Part 83.

(d) In addition to the applicable billing requirements set forth in section 540.7 of this Title, each provider and purveyor who provides services in a shared health facility shall include in their claims submitted for payment, under the medical assistance program the registration number assigned to such facility by the State Department of Health.

(e) All third-party insurance benefits covering a recipient, including benefits under title XVIII of the Social Security Act, shall be applied against the cost of medical care and services provided in a shared health facility in accordance with the provisions of section 360.9 of this Title.

PART 303

PROHIBITIONS AGAINST DISCRIMINATION

Section 303.1 Social services district policy. (a) No social services district or official shall establish or apply any policy or practice which would have the effect of discriminating against an individual because of race, color, national origin, age, sex, religion or handicap. This prohibition shall apply to all aid, care, services, benefits or privileges provided directly, or indirectly by other agencies, organizations or institutions participating under contractual or other arrangements.

(b) In the provision of public assistance, child welfare services, other care

and services, no social services district or any member of his staff shall, on the basis of race, color, national origin, age, sex, religion or handicap:

- (1) deny an individual any aid, care, services, other benefits or privileges provided by the district;
 - (2) provide any aid, care, services, other benefits or privileges to an individual which are different, or are provided in a different manner, from that provided others;
 - (3) subject an individual to segregation or separate treatment in any matter related to his receipt of any aid, care, services, other benefits or privileges;
 - (4) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, care, services, other benefits or privileges;
 - (5) treat an individual differently from others in determining whether he satisfies any eligibility or other requirement or condition which individuals must meet in order to receive any aid, care, services, other benefits or privileges;
 - (6) deny any individual an opportunity to participate in a program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee where the primary objective of the program is to provide employment, including a program under which the employment provided to reduce unemployment);
 - (7) make distinction in relation to use of physical facilities, intake and application procedures, caseload assignments, determination of the amount and type of aid, care services and other benefits under the program and use thereof.
- (c) No social services district or official shall establish any employment policy or service which would have the effect of discriminating against an individual because of color, national origin, age, sex, religion or handicap.

303.2 Utilization of other organizations. No social services district shall utilize, purchase or otherwise obtain assistance, care or services from any organization, institution or facility which discriminates on the basis of race, color, national origin, age, sex, religion or handicap, as set forth in section 303.1 of this Part or otherwise, nor shall it participate in any program that so discriminates.

303.3 Participants in community work and training programs. In the operation of community work and training programs and in its participation in any program under the Economic Opportunity Act, no social services district shall permit any discrimination on the basis of race, color, national origin, age, sex, religion or handicap, in the selection of participants for the program, assignment or reassignment to projects, promotions, demotions, rates and form of compensation, separate use of facilities or other treatment of participants.

303.4 Volunteers and other nonemployees of social services districts. No social services district shall permit discrimination on the basis of race, color, national origin, age, sex, religion or handicap, in any program of public assistance, care or service by a nonemployee, such as a volunteer, consultant, observer, trainee, participant in an institute or member of an advisory group.

303.5 Compliance with Civil Rights Act of 1964. (as amended in 1972) and Rehabilitation Act of 1973. Applicants for or recipients of public assistance and care may not be placed in or referred to a public, private nonprofit or private proprietary facility which discriminates on the basis of race, color, national origin, age, sex, religion or handicap contrary to the requirements of titles VI and VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, or violates either section 40 of the Civil Rights Law of the State of New York or section 296 of the Executive Law of the State of New York, nor may services be provided which would be supportive of such facility or vendor payments made thereto.

303.6 Protection of recipients from unlawful discrimination. (a) When a social services official or any member of his staff reports instances of discrimination against a recipient of public assistance and care based on age and employment, or race, color, national origin, age, sex, religion or handicap in the fields of employment, housing or public accommodation, which comes to his attention, he shall use the prescribed form.

(b) There shall be displayed in each local social services department and in each of its branch offices an informational poster of the State Commission for Human Rights. Staff of each local department shall be informed of their responsibilities to report instances of discrimination to the Commission for Human Rights.

303.7 Persons with AIDS or infected with HIV. For purposes of this Part, the term handicap includes being diagnosed as having AIDS, testing positive for HIV infection or being perceived as susceptible to AIDS or HIV infection. Such persons must be protected from

discrimination in accordance with all applicable provisions of this Part.

NEW YORK ADMINISTRATIVE CODE, part 12

Social services, continued

SUBPART 360-8

CONFIDENTIALITY OF HIV- AND AIDS- RELATED INFORMATION

360-8.1 Confidentiality of HIV- and AIDS- related information.

- (a) Definitions. (1) AIDS means acquired immune deficiency syndrome, as may be defined from time to time by the Centers for Disease Control of the United States Public Health Service.
- (2) HIV infection means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.
- (3) HIV related illness means any illness that may result from or may be associated with HIV infection.
- (4) HIV related test means any laboratory test or series of tests for any virus antibody, antigen or etiologic agent whatsoever thought to cause or to indicate the presence of AIDS.
- (5) 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.
- (6) Health or social service means any public or private care, treatment, clinic 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 one of the Social Services Law; employment-related service housing services, foster care, shelter, protective services, day care, or prevention services provided pursuant to the Social Services Law; services for the mentally disabled as defined in article one of the Mental Hygiene Law; probation services, provided pursuant to article twelve of the Executive Law; parole services, provide pursuant to article

twelve-B of the Executive Law; correctional services, provide pursuant to the Correction Law; and detention and rehabilitative services provide pursuant to article nineteen-G of the Executive Law.

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

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

(b) Applicability. This section applies to any person who obtains or receives confidential HIV related information in the course of administering the medical assistance program (MA) and implements article 27-F of the Public Health Law. Any use or disclosure of such confidential HIV related information made on or after February 1, 1989 is subject to the terms of this section.

(c) Standard of use and disclosure. Confidential HIV related information can be used or disclosed only for a purpose which is directly connected with the administration of the MA program and consistent with the limitations of section 2782 of the Public Health Law relating to persons to whom or entities to which confidential HIV related information may be disclosed. As applied to this section, such a purpose may include supervision, monitoring, administration or provision of MA care, services and supplies. Any adverse case action taken against an applicant for or recipient of MA must be based solely upon the terms and conditions of eligibility and the furnishing of care, services and supplies as established by the Social Services Law and this Title. All social services district officials, employees and their agents are responsible for ensuring that no discrimination or abuse occurs against an applicant for or recipient of MA about whom confidential HIV related information is maintained.

(d) Access to confidential HIV related information. No social services district official, employee or agent will have access to confidential HIV related information except as necessary for the fulfillment of a purpose which is related to an official duty of such official, employee or agent and is directly connected with the administration of the MA program.

(e) Redisclosure of confidential HIV related information. No social services district official, employee or agent to whom confidential HIV related information has been disclosed can disclose such information to any other person except as authorized under subdivisions (c) and (d) of this section.

(f) Disclosure of confidential HIV related information under legal process.

Confidential HIV related information must be disclosed for purposes of judicial administration only upon service of a court order for disclosure made pursuant to section 2785 of the Public Health Law.

(g) Disclosure of confidential HIV related information pursuant to a release.

(1) Confidential HIV related information may be disclosed pursuant to a release. A release is a written authorization for disclosure of confidential HIV related information which satisfies the following conditions. The release:

(i) is signed by the person who is the subject of the confidential HIV related information or, if such person lacks capacity to consent, a person authorized pursuant to law to consent to health care for the person lacking capacity;

(ii) is dated and specifies the time period during which the release is to be effective; and

(iii) specifies to whom disclosure is authorized and the purpose for such disclosure.

(2) A general authorization for release of medical or other information does not satisfy the requirements of this subdivision and confidential HIV related information cannot be disclosed in response to a general release,

(h) Statement accompanying disclosure. (1) Any written disclosure of confidential HIV related information must be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from confidential records which are protected by State law. The law prohibits you from making any further disclosure 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."

(2) Any oral disclosure of confidential HIV related information must be accompanied or followed as soon as possible, but no later than 10 days, by the statement in writing required by paragraph (1) of this subdivision.

(3) The statement in writing provided for in paragraph (1) of this subdivision is not required to accompany or follow a disclosure of confidential HIV related information made to the person who is the subject of the confidential HIV related information or, if such person lacks capacity to consent, a person authorized pursuant law to consent to health care for the person lacking capacity.

(i) Policy and procedures for maintaining confidentiality. The department and social services districts must develop and implement policies and

procedures to maintain the confidentiality of HIV related information. Such policies and procedures must be effectively communicated to social services officials, employees and agents and must include, but not be limited to, the following:

- (1) responsibilities of staff to safeguard confidential HIV related information;
- (2) procedures for secure record maintenance of confidential HIV related information, including electronically stored records; and
- (3) procedures for accessing and disclosure of confidential HIV related information to assure that only authorized persons gain access to such information for permissible purposes.

397.11 Emergency shelter allowances for persons with acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV)-related illness as defined by the AIDS Institute of the State Department of Health faced with homelessness. (a) General. An additional allowance for shelter called an emergency shelter allowance must be provided to applicants for such allowances who have been medically diagnosed as having AIDS or HIV-related illness as defined from time-to-time by the AIDS Institute of the State Department of Health and are homeless or faced with homelessness,

(b) Conditions of eligibility. In order to be eligible for an emergency shelter allowance, an applicant must:

- (1) apply for an emergency shelter allowance;
- (2) provide medical documentation that he or she has AIDS or that he or she tests positive for HIV and has an HIV-related illness as defined from time-to-time by the AIDS Institute of the State Department of Health;
- (3) apply for, be eligible for, or be in receipt of SSI benefits;
- (4) meet the home relief income and resources standards, if the applicant is not receiving SSI; and
- (5) be homeless or faced with homelessness and have no viable and less costly alternative housing available. The social and medical needs of the applicant must be considered in making a determination as to availability of alternative housing.

(c) Amount of emergency shelter allowances, The amount of an emergency shelter allowance is equal to the amount by which a hypothetical public assistance standard of need for such household exceeds the actual net available income of the household, including any public assistance and SSI benefits, The shelter component of such hypothetical public assistance standard of need is \$480 for the first person in the household and \$330 for

each additional person in the household, but in no event greater than the actual monthly rent due, For purposes of calculating the emergency shelter allowance, the household consists of the individual with AIDS or HIV-related illness as defined from time-to-time by the AIDS Institute of the State Department of Health and any member of his or her family residing with him or her.

(d) Social services needs, When necessary, social services districts must:

(1) address the social services needs of persons in receipt of emergency shelter allowances through the direct provision of services or through the provision of appropriate information and referrals. Efforts should be made to ensure that applicants for and recipients of such allowances have established appropriate social and medical support networks;

(2) assist applicants for and recipients of emergency shelter allowances in securing required documentation; and

(3) arrange for required face-to-face interviews to be conducted during home visits or at other appropriate sites, In accordance with department regulations, designated representatives may file and sign application and recertification documents on behalf of applicants for and recipients of emergency shelter allowances,

(e) Reporting requirements. Social services districts which provide emergency shelter allowances under this section must submit reports to the department's division of income maintenance on the utilization of emergency shelter allowances in accordance with instructions issued by the department.

900.19 Confidentiality of HIV and AIDS related information. (a) An operator or employee must not require that an applicant for employment, volunteer, prospective resident, resident or employee be tested for HIV.

(b) An operator or employee must not require an applicant for employment, volunteer, prospective resident, resident or employee to disclose confidential HIV related information.

(c) Confidential HIV related information means any information, in the possession 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. The terms HIV related test, HIV infection, HIV related illness and AIDS are defined in section 360-8,1 of this Title.

(d) The HIV status of an applicant for employment, prospective resident,

resident, volunteer or employee cannot be used as the sole basis to deny admission, retention or employability.

(e) Confidential HIV related information may be disclosed by an operator, employee or volunteer only in accordance with the procedures set forth in this section and only is necessary to provide appropriate services to a resident.

(f) (1) The operator must maintain the confidentiality of individual resident record, must not release information in a resident record to anyone other than the resident, next of kin or authorized representative of the resident, an employee or designee of the department or employees of the facility providing social services without the resident's written permission, provided that confidential HIV related information concerning residents must be maintained in accordance with this section.

(2) The operator must maintain confidential HIV related information concerning employees, volunteers, applicants for employment and prospective residents in accordance with this section.

(g) An operator, volunteer or employee who obtains confidential HIV related information concerning any prospective resident, resident, applicant for employment, employee or volunteer may disclose that information to a health care provider or health facility when knowledge of the confidential HIV related information is necessary to provide appropriate care or treatment to the protected individual, Except as specified in subdivision (k) of this section, in all other circumstances, an operator, volunteer, or employee who obtains confidential HIV related information concerning any applicant for employment, prospective resident, resident, employee or volunteer must not disclose that information without specific written authorization to release that information from:

(1) the protected individual; or

(2) a person authorized by law to consent to health care for the individual,

(h) The authorization to release HIV information must:

(1) be dated;

(2) specify to whom disclosure is authorized;

(3) specify the purpose for the disclosure;

(4) specify the time period during which the release is effective;

(5) specify that the information to be disclosed is confidential HIV information; and

(6) be signed by the protected individual or, if the individual lacks capacity

to consent, a person authorized pursuant to law to consent to health care for the individual.

(i) A general authorization for the release of medical or other information cannot be used as an authorization to release confidential HIV related information.

(j) Whenever an operator, volunteer or employee discloses confidential HIV- related information, that person must:

(1) enter a dated and signed notation of disclosure of confidential HIV related information in the protected individual's record; and

(2) within 10 days of the date of disclosure, when disclosure is oral, or simultaneous, when disclosure is written, give a written statement to the person to whom the confidential HIV related information is disclosed which states:

"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."

(k) Notwithstanding the requirements of this section, an operator of a shelter for homeless families or an employee or volunteer of such a facility is obligated to release confidential HIV related information to authorized employees or agents of the department or a social services district when such information is reasonably necessary to supervise, monitor, or administer the facility and such employee or agent of the department or a social services district would, in the ordinary course of business have access to such records. Authorized employees and agents of the department or a social services district may obtain confidential HIV related information under this subdivision even though the facility does not obtain the release specified in subdivision (h) of this section. In addition, when information is released under this section by a shelter for homeless families, the facility is not required to give the statement specified in subdivision (j) of this section to the employees or agents of the department nor is the facility required to indicate in any resident's record that the information was released.

(b) A monthly allowance of \$50 must be added to the appropriate monthly special needs allowance to residents beginning with the fourth month of pregnancy or the month or in which medical verification of the pregnancy is presented to the district, whichever is later, as provided for in section 352.7(k) of this Title.

(c) Allowances cannot be provided where they would duplicate grants or allowances already received, unless the general requirements governing replacement grants are satisfied.

1000.18 Shelter charges. (a) To the extent that a resident has income, the resident must pay for the actual costs of care. For recipients of Aid to Dependent Children, Emergency Assistance to Needy Families, or Home Relief, public assistance budgeting rules set forth in Part 352 of this Title must be used in determining the amount of available income to be applied towards the costs of care.

(b) Any amounts which are not permitted to be counted as income under the assistance program applicable to the resident cannot be counted as income for the purposes of this section.

1000.19 Confidentiality of HIV- and AIDS- related information. (a) An operator or employee of a shelter for homeless pregnant women as defined in section 1000.2 of this Part must not require that an applicant for employment, volunteer, prospective resident, resident or employee be tested for HIV.

(b) An operator or employee must not require an applicant for employment, volunteer, prospective resident, resident or employee to disclose confidential HIV-related information.

(c) 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. The terms HIV-related test, HIV infection, HIV-related illness and AIDS are defined in section 360.8-1 of this Title.

(d) The HIV status of an applicant for employment, prospective resident, resident, volunteer or employee cannot be used as the sole basis to determine admission, retention or employability.

(e) Confidential HIV-related information may be disclosed by an operator or employee only in accordance with the procedures set forth in this subdivision and only as necessary to provide appropriate services to a resident.

(f) (1) The operator must maintain the confidentiality of individual

resident records, and not release information in a resident record to anyone other than the resident, next of kin or authorized representative of the resident, an employee or designee of the department or employees of the shelter providing social services without the resident's written permission, provided that confidential HIV-related information concerning residents must be maintained in accordance with this section.

(2) The operator must maintain confidential HIV-related information concerning employees, volunteers, applicants for employment and prospective residents in accordance with this section.

(g) Confidential HIV-related information may be disclosed by an operator, volunteer or employee only in accordance with the procedures set forth in this section and only as necessary to provide appropriate services to a resident.

(h) An operator, volunteer or employee who obtains confidential HIV-related information concerning any prospective resident, resident, applicant for employment, employee or volunteer may disclose that information to a health care provider or health facility when knowledge of the confidential HIV-related information is necessary to provide appropriate care or treatment to the protected individual. Except as specified in subdivision (1) of this section, in all other circumstances, an operator, volunteer, or employee who obtains confidential HIV-related information concerning any applicant for employment, prospective resident, resident, employee or volunteer must not disclose that information without specific written authorization to release that information from:

(1) the protected individual; or

(2) a person authorized by law to consent to health care for the individual.

(i) The authorization to release HIV-related information must:

(1) be dated;

(2) specify to whom disclosure is authorized;

(3) specify the purpose for the disclosure;

(4) specify the time period during which the release is effective;

(5) specify that the information to be disclosed is confidential HIV information; and

(6) be signed by the protected individual or, if the individual lacks capacity to consent, a person authorized pursuant to law to consent to health care for the individual.

(j) A general authorization for the release of medical or other information

cannot be used as an authorization to release confidential HIV-related information.

(k) Whenever an operator, volunteer or employee discloses confidential HIV-related information, that person must:

(1) within 10 days of the date of disclosure, notify the protected individual in writing;

(2) enter a dated and signed notation of disclosure of confidential HIV-related information in the protected individual's record; and

(3) within 10 days of the date of disclosure, give a written statement to the person to whom the confidential HIV-related information is disclosed which states:

"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."

(1) Notwithstanding the requirements of this section, an operator of a shelter for homeless pregnant women as defined in section 1000.2 of this Part or an employee of such a shelter is obligated to release confidential HIV-related information to employees or agents of the department when such information is reasonably necessary to supervise, monitor, or administer the shelter and such employee or agent of the department would, in the ordinary course of business have access to such records. Authorized employees and agents of the department may obtain confidential HIV-related information under this subdivision even though the shelter does not obtain the release specified in subdivision (h) of this section. In addition, when information is released under this section by a shelter for homeless pregnant women, the shelter is not required to give the statement specified in subdivision (k) of this section to the employees or agents of the department nor is the shelter required to indicate in any resident's record that the information was released.