

Topic: Privacy of Confidential HIV Information	Department: Entire Agency
Original effective date: 4/1/03	Last revision date: 11/15/24
Owner: VP for Quality and Compliance	Frequency of reviews: Annual
Internal/Regulatory Reference(s) (all that apply): NYS Public Health Law (PHL) Article 27-F; NYS PHL §2782; 14 NYCRR 633.19	
Related documents/Links: NYS Confidentiality Law and HIV: Public Health Law, Article 27-F https://www.health.ny.gov/publications/9192.pdf Authorization for release of health information and confidential HIV-related information https://www.health.ny.gov/forms/doh-2557.pdf Instructions for completing the DOH-2557 – Authorization for release of health information and confidential HIV-related information https://www.health.ny.gov/forms/instructions/doh-2557_instructions.pdf Access to DOH-2557 form in various languages https://www.health.ny.gov/diseases/aids/providers/forms/informedconsent.htm	

Policy: It is the policy of The Arc of Monroe (“The Arc”) to ensure that people have opportunities for privacy and that business, administrative and support functions promote personal and organizational outcomes.

Additional Information: Public Health Law Article 27-F protects confidentiality and privacy of anyone who has:

- Been tested for HIV
- Been exposed to HIV
- A diagnosis of HIV or HIV/AIDS-related illness; or
- Been treated for HIV/AIDS-related illness

Because this law is more stringent than HIPAA, it pre-empts HIPAA law. This means that we have to follow this law in addition to HIPAA whenever we are dealing with HIV-related information, because it allows more protections to people than HIPAA would.

Please Note: regardless of what is allowed in terms of the disclosure of confidential hiv-related information, Minimum Necessary requirements always apply. As a reminder, this means that only the least amount of information may be accessed, used or disclosed in order to accomplish the valid work-related task at hand.

Confidential HIV-related information is any information that shows a person:

- Had an HIV-related test
- Has a diagnosis of living with HIV, HIV-related illness, or AIDS
- Has been exposed to AIDS
- Has one of these conditions, including information on the person’s sexual contacts or needle-sharing contacts; or
- Is a partner or sexual/substance use contact of a person diagnosed as living with HIV

Per NYS Public Health Law (PHL) §2782, no person who obtains confidential HIV related information in the course of providing any health or social service or pursuant to a release of confidential HIV related information may disclose or be compelled to disclose such information, except to the following:

- The person we support or, when the person we support lacks capacity to consent, to a person authorized to consent to health care for the person
- Any person for whom the disclosure is authorized pursuant to a release of confidential HIV related information (see below)
- An agent or employee of a health facility or health care provider if:
 - The agent or employee is permitted to access medical records;
 - The health facility or health care provider itself is authorized to obtain the HIV related information; AND
 - The agent or employee provides health care to the person we support, or maintains or processes medical records for billing or reimbursement.
- A health care provider or facility when knowledge of the HIV related information is necessary to provide appropriate care or treatment to the person we support, a child of that person, a contact of that person, or a person authorized to consent to health care for such a contact.
- A health facility or health care provider, in relation to the procurement, 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 education, research, therapy, or for transplantation to individuals
- Health facility staff committees or accreditation or oversight review organizations authorized to access medical records; provided that such committees or organizations may only disclose confidential HIV related information:
 - Back to the facility or provider of health or social service
 - To carry out the monitoring, evaluation, or service review for which it was obtained; OR
 - To a federal, state or local government agency for the purposes of and subject to the conditions provided in subdivision 6 of NYS Public Health Law (PHL) §2782:
 - The provisions of subdivision 6 of PHL §2782 apply where a provider of a health or social service possesses confidential HIV-related information relating to individuals who are recipients of the service, and a federal, state or local government agency supervises or monitors the provider or administers the program under which the service is provided.
 - Confidential HIV-related information relating a recipient of such service may be disclosed to an authorized employee or agent of such provider or government agency, when reasonable necessary for such supervision, monitoring, administration, or provision of such service. The term “authorized employee or agent” as used in this subdivision shall only include any employee or agent who would, in the ordinary course of business of the provider or government agency, have access to records relating to the care of, treatment of, or provision of a health or social service to the protected individual.
- A federal, state, county or local health officer when such disclosure is mandated by federal or state law
- Third party reimbursers or their agents to the extent necessary to reimburse health care providers for health services; provided that, where necessary, an otherwise appropriate authorization for such disclosure has been secured by the provider
- A insurance institution, for other than the purpose set forth in the bullet above, provided the insurance institution secures a dated and written authorization that indicates that health care providers, health facilities, insurance institutions, and other persons are authorized to disclose information about the person we support, the nature of the information to be disclosed, the purposes for which the information is to be disclosed and which is signed by:
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- The person we support or, if the lack capacity to consent, then is signed by such other person authorized pursuant law to consent for the person
- Any person to whom disclosure is ordered by a court
- An employee or agent of the department of corrections, community supervision, probation, correctional alternatives, the medical director of a local correctional facility, or an employee or agent of the commission of correction to the extent the employee or agent is authorized to access records containing such information in order to carry out the department's functions, powers and duties with respect to the person
- An attorney appointed to represent a minor pursuant to the social services law or the family court act, with respect to confidential HIV related information relating to the minor and for the purpose of representing the minor.
- An executor or an administrator of an estate shall have access to the confidential HIV information of a deceased person as needed to fulfill their responsibilities as an executor or administrator.

Whenever disclosure of confidential HIV related information is made pursuant to NYS PHL §2782, it shall be accompanied by a statement in writing that includes the following or similar language: "This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for further disclosure." An oral disclosure shall be accompanied or followed by such a notice within 10 days. The following exceptions apply to this requirement:

- Disclosures to the person or their legal representative
- Disclosures to another health care provider
- Disclosures to third party reimbursers

Except for disclosures made to other Arc employees or to surveyors or auditors, a notation of all such disclosures must be placed in the person's medical record (this information provided to insurance institutions only needs to be noted the first time it happens). The person shall be informed of all such disclosures upon request.

Per 14 NYCRR 633.19:

- The Arc of Monroe is required to ensure the confidentiality of information in our possession concerning whether a person admitted for service or proposed for admission has been the subject of an HIV-related test; or has an HIV-related infection, HIV-related illness, or AIDS; or any information indicating a person's possible exposure to HIV.
- No one shall have access to HIV-related information unless they have access to clinical records in the ordinary course of business, have been trained in matters of confidentiality and related issues, and access to the HIV-related information is reasonably necessary under the following circumstances:
 - To provide for the appropriate care and treatment of a person as described in their program plan except when the sole purposes of accessing the information is to monitor or limit behaviors that could result in significant risk contacts* (see definition at the end of this regulatory section); and the program planning team, in consultation with the person, has determined that they (the

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person) exhibit the capacity and willingness to manager their behaviors so that the monitoring or limitations are not necessary

- The Arc of Monroe is required to protect the confidentiality of HIV-related information, whether in the form of records or computer data, which is maintained by or is transferred to authorized parties as defined above.
- HIV-related information shall not be examined , removed or copied by any person unless authorized as indicated above, [10 NYCRR 63](#), or article 27-F of the Public Health Law.
- HIV-related information shall not be disclosed to or discussed with any party unless such party is authorized to access such information pursuant to article 27-F of the Public Health Law, 10 NYCRR 63.5, or the information noted above and there is a need to do so
- The use of markers on the face of clinical files, lists posted on walls, or other codes or displays for the sole purpose of identifying persons with HIV infection is prohibited.
- All disclosures, oral or written, except as indicated below, shall be accompanied by the following statement:

“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. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure. Any unauthorized further disclosure in violation of state law may result in a fine or jail time or both.”
- All disclosures, oral or written, shall be noted in the clinical record except:
 - Only initial disclosures to insurance institutions must be noted;
 - Notation is not required for disclosure to agents or health care providers or health care facilities if:
 - The agency or health care provider is authorized to access medical or clinical records;
 - The health care facility or health care provider is authorized to obtain the HIV-related information; and
 - The agent or health care provider provides general or specific health care to the protected individual, or maintains or processes medical records for billing or reimbursement
 - Notation is not required for persons engaged in quality assurance, program monitoring or evaluation, nor for governmental agents acting pursuant to contract or law
 - A protected person shall be informed of disclosures of HIV information upon request of that person
 - Confidential HIV-related information shall not be disclosable pursuant to Public Officers Law, article 6 (the Freedom of Information Law)
- Violation of these confidentiality provisions may lead to disciplinary action, including suspension or dismissal from employment, and civil or criminal liability.
- The Arc of Monroe shall ensure that no person being service or anyone proposed for services is discriminated against, abused or otherwise treated adversely because of their status as one who is the subject of an HIV-related test, or who is thought to be, or who is, HIV infected. Discrimination includes, but is not limited to, the denial of appropriate services, isolation or quarantine, or the restriction of rights as described in 14 NYCRR 633, solely because the person or other party has or is thought to have HIV infection.

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*Significant risk (of transmitting or contracting HIV infection) is defined in the regulations as:

- Sexual intercourse (vaginal, anal, oral) which exposes a noninfected individual to blood, semen or vaginal secretions of an infected individual;
- Sharing of needles or other paraphernalia used for preparing and injecting drugs between infected and noninfected individuals;
- The gestation, birthing or breastfeeding of an infant when the mother is infected with HIV;
- Transfusion or transplantation of blood, organs, or other tissues from an infected individual to an uninfected individual, provided such blood, organs or other tissues have not been tested negatively for antibody or antigen and have not been rendered noninfective by heat or chemical treatment;
- Other circumstances not identified above during which a significant risk body substance (other than breast milk) of an infected individual contacts mucous membranes (e.g., eyes, nose, mouth), nonintact skin (e.g., open wound, skin with a dermatitis condition, abraded areas) or the vascular system of a noninfected person. Some circumstances include, but are not limited to needle-stick or puncture wound injuries and direct saturation or permeation of these body surfaces by the infectious body substance;
- Circumstances that involve significant risk shall not include:
 - Exposure to urine, feces, sputum, nasal secretions, saliva, sweat, tears or vomitus that does not contain blood that is visible to the naked eye;
 - Human bites where there is no direct blood to blood, or blood to mucous membrane contact;
 - Exposure of intact skin to blood or any other body substance; and
 - Occupational settings where individuals use scientifically accepted barrier techniques and preventive practices in circumstances which would otherwise pose a significant risk.

Generally, HIV-related information can only be disclosed if the person signs an approved HIV release form. For example, a medical provider may not share confidential HIV information from a person's medical record with a case manager or other staff person from a community-based organization without a signed release form. To disclose HIV-related information from a medical record to a non-medical provider for any purpose, including linkage to care, a specific signed release is required. A link to this authorization form (along with instructions and access to the form in other languages) is at the top of this page. This form is available in the following languages:

- English
- Spanish
- Mandarin Chinese
- French
- Haitian Creole
- Italian
- Korean
- Russian

HIV-related information may be disclosed without an approved HIV release form in the following cases:

- For medical treatment: Medical professionals working on the treatment team with a person's existing provider may discuss a patient's HIV-related information with each other or with their supervisors, but only to give necessary care
- To monitor health care and disease prevention: Health care facility staff and committees (such as here at The Arc), oversight review organizations, or government agencies (such as OPWDD, NYS DOH, etc.)

that are authorized to have access to medical records may be given HIV-related information when it is needed to supervise, monitor, or administer a health service or social service.

For the purposes of this procedure, “staff” includes employees, contractors, consultants, interns, students and volunteers.

Procedure	
Task:	Responsible party:
General Guidelines	
1. Staff who work with someone who is living with HIV or an HIV-related illness/AIDS may only know this information if it relates to their work and the level of support they provide the person.	Staff
2. Staff can share confidential HIV information with other staff only if it is necessary for their job and to keep the person safe and healthy	Staff
3. Staff can share confidential HIV information with outside providers only to ensure that the person is given necessary care. Not every outside provider will need to know this information. Staff should ask if they are unsure.	Staff
4. Staff may not in any way flag or mark the records of someone living with HIV to indicate that they have HIV, an HIV-related illness or AIDS. Doing so may result in disciplinary action up to and including termination of employment.	Staff
5. Staff should not withhold confidential HIV information during a regular state certification review by OPWDD. That being said, they should also do nothing to highlight or point out this information to the surveyors.	Staff
6. If staff is ever unsure about whether it’s appropriate and allowable to share confidential HIV information with others – including other staff, outside providers, or auditors – or if a signed authorization is needed to do so, they should ask their manager or the VP for Quality and Compliance	Staff
Manager responsibilities:	
1. Managers are responsible for acting as role models for other staff in regard to keeping confidential HIV information secure, consistent with NYS Department of Health and other regulatory requirements.	Managers
2. Managers should have a solid understanding of these requirements, including how confidential HIV information should be maintained, when it can and cannot be shared, and with whom; or how to find the necessary support they need to manage it within requirements.	Managers
VP for Quality and Compliance:	
1. Acts as the agency’s Privacy Officer	VP for Quality and Compliance
2. Responsible for administering the agency’s HIPAA privacy policies and procedures and, in this instance, the NYS Department of Health requirements regarding confidential HIV information.	VP for Quality and Compliance
3. Acts as a resource for staff in regard to proper implementation of the HIPAA privacy rule and any other regulatory requirements regarding confidential HIV information.	VP for Quality and Compliance

Document revision record:

Revision Date	Release Date	Reason for change	Approver
1/26/21	1/26/21	Transitioned to new procedural format and clarified some aspects	P Dancer
12/10/21	12/15/21	Added NYS PHL 2782 information	ICC
10/24/22	11/14/22	Fleshed out subdivision 6 of PHL §2782 in additional information	ICC
12/20/23	12/20/23	Added regulatory information for 14 NYCRR 633.19; added reference to other regulatory requirements	ICC
11/15/24	11/15/24	Added a clear statement regarding minimum necessary and clarifying language	ICC