

**Repeal 14 NYCRR Parts 309, 1070, 1072
ADD NEW 14 NYCRR PART 807**

RESPONSIBILITIES REGARDING HIV/AIDS

[Statutory authority: Mental Hygiene Law, §§ 19.07, 19.09(b), 31.04, 32.07(a); Public Health Law Article 27F.]

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807.1 Applicability

This Part applies to any program certified by the Office to provide addiction treatment services.

807.2 Legal Basis

- (a) Section 19.07 of the Mental Hygiene Law (MHL) authorizes the commissioner to adopt standards including necessary rules and regulations pertaining to chemical dependence treatment services.
- (b) Section 19.09(b) of the MHL authorizes the commissioner to adopt regulations necessary and proper to implement any matter under his/her jurisdiction.
- (c) Section 32.07(a) of the MHL authorizes the commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the MHL.
- (d) Article 27-F of the Public Health Law defines the rules governing HIV testing, treatment and confidentiality/disclosure in New York.

807.3 Intent

The intent is to clarify obligations of providers certified or otherwise authorized pursuant to this Chapter regarding HIV-related services and confidentiality. This Part is aligned with New

York's plan to end the AIDS epidemic by ensuring that everyone knows their HIV status and has access to medications used to prevent or treat HIV. Effective treatment with antiretroviral medication results in an undetectable viral load, making it nearly impossible to transmit HIV to another person.

807.4 Definitions

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

- (a) "AIDS" means acquired immune deficiency syndrome, as may be defined from time to time by the Centers for Disease Control of the United States Public Health Service.
- (b) "Capacity to consent" means an individual's ability, determined without regard to 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, and to make an informed decision concerning such service, treatment, procedure or disclosure.
- (c) "Contact" means a person who the protected individual may have exposed to HIV under circumstances presenting a risk of HIV transmission.
- (d) "Confidential HIV-related information" means any information concerning whether an individual has been the subject of an HIV-related test, 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.
- (e) "Health care provider" means any provider of services for the mentally disabled as defined in article one of the mental hygiene law, or other health care or mental health service, including those associated with, or under contract to, a third-party payor.
- (f) "Health facility" means a hospital, blood bank, blood center, sperm bank, organ or tissue bank, clinical laboratory, or a facility providing care or treatment to persons with a mental disability.
- (g) "HIV infection" means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.
- (h) "HIV-related illness" means any illness which may result from or be associated with HIV infection.

- (i) “HIV-related test” means any laboratory test or series of tests approved for the diagnosis of HIV.
- (j) “Post-exposure prophylaxis) (PEP) means the use of antiretroviral medication to prevent acquisition of HIV infection among HIV-negative people who report a specific high-risk exposure to HIV, such as through sexual contact or sharing injection equipment with someone who might have HIV.
- (k) “Pre-exposure prophylaxis” (PrEP) means the use of antiretroviral medication to prevent acquisition of HIV infection by HIV-negative people who are at risk of being exposed to HIV, such as through sexual contact or sharing injection equipment with someone who might have HIV.
- (l) “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.
- (m) “Significant risk” or “significant risk body substance” means any circumstance or substance which may cause the transmission of HIV.
- (n) “Staff,” for purposes of this Part, means any staff member, employee, associate, agent, intern, volunteer, or contractor working for or with the provider.

807.5 Policies and Procedures

- (a) All providers of substance use disorder services must develop and implement written policies, procedures and methods governing the provision of HIV prevention education, testing, counseling, and the confidentiality of HIV-related information pursuant to this Part and laws and regulations of the Department of Health.
- (b) Policies and procedures must specify each staff who has access to confidential HIV-related information, and the education and training such staff must receive at least annually, in order to minimize the number of individuals with access to such information.
- (c) Policies and procedures must require that each staff of the program authorized to access confidential HIV-related information be advised in writing and sign a statement attesting to the following:
 - (1) they will not examine HIV-related information in the treatment/recovery plan unless required to in the course of their duties and responsibilities;

(2) they will not remove or copy any such documents or computer data unless they are acting within the scope of their assigned duties;

(3) they will not disclose HIV-related information unless necessary and in compliance with this Part and all other state and federal laws; and

(4) that violation may lead to disciplinary action, including suspension or dismissal, as well as arrest and criminal prosecution.

(d) Policies and procedures must ensure that records, including records stored electronically, are maintained securely.

(e) Policies and procedures must specify procedures for handling requests for HIV-related information by outside parties pursuant to the requirements of this Part, Article 27F of the Public Health Law and all other state and federal laws.

807.6 Infection Control Plan

(a) Each program must establish an infection control plan appropriate for the services provided including, at a minimum, the following:

(1) Prevention of circumstances which could result in staff or patient(s) 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 must be taken 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 involving the use of contaminated instruments or equipment which may cause puncture injuries.

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

(b) Procedures must be developed in response to circumstances in which a staff or patient is exposed to a significant risk body substance including a system for:

(1) reporting any such exposure to a designated individual in the program;

(2) evaluating the circumstances of a reported exposure and procedures for appropriate medical and epidemiological follow-up services for the exposed individual, including access to medications for post-exposure prophylaxis.

- (c) Any disclosure of HIV-related information related to exposures must comply with this Part and applicable state and federal confidentiality laws.

807.7 HIV-related Testing and Prevention

(a) *Testing.* Patients admitted to any Office certified, funded and/or otherwise authorized program shall be offered an HIV test. Such test may be offered on-site or by referral. Staff must note in the patient's case record that the test was offered and whether the patient declined to be tested.

(b) *Prevention.* (1) Prevention counseling shall include, but not be limited to, discussions regarding use of condoms and sexual health, not sharing drug use paraphernalia, and pre- and post-exposure prophylaxis.

(2) Patients entering certified, funded and/or otherwise authorized programs on a prescribed HIV prevention medication regimen must be maintained on such regimen unless consultation with the prescribing practitioner and the patient has occurred and the patient has consented to an alternative regimen.

807.8 Non-discrimination

(a) *Discrimination prohibited.* No program shall deny admission to, terminate care and/or treatment, change the status of, limit or otherwise reduce the range, quality or variety of addiction services to any person solely on the basis of that person's actual, presumed, or alleged HIV-related condition or status; provided that this requirement shall not preclude appropriate differential treatment necessitated by the individual's medical condition.

(b) *Conditions prohibited.* No program 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 services or to disclose the results of any previous or future HIV test.

807.9 Confidentiality and Disclosure of HIV-related Information

(a) *Confidentiality.* (1) The disclosure of HIV related information is governed by Article 27-F of the Public Health Law, 42 C.F.R. Part II, the Health Insurance Portability and Accountability Act (HIPAA) and by this Part.

(2) Confidential HIV-related information must be recorded in the case record of the protected individual.

(3) HIV-related information may not be disclosed to staff of the provider except to:

(i) a person to whom disclosure of confidential HIV-related information is specifically authorized pursuant to a written release; or

(ii) an authorized staff of a health facility or health care provider in accordance with this Part and Article 27F of the Public Health Law.

(4) All clients in addiction treatment programs must receive a written notice summarizing these confidentiality requirements.

(5) Confidential HIV-related treatment information may be recorded in the treatment/recovery plan of the protected individual.

(b) *Authorized disclosure.* (1) A written authorization to disclose HIV-related information must be in a form, compliant with any applicable federal requirements, approved by the Office and the Department of Health. The form consenting to release of HIV-related information must be signed by the protected individual, or if the protected individual lacks capacity to consent, by a person legally authorized to consent to health care for the individual.

(2) A notation of each authorized disclosure must be placed in the protected individual's case record. The protected individual must be informed of any disclosures upon request.

(3) All written disclosures of confidential HIV-related information must be accompanied by a statement prohibiting re-disclosure.

(4) If oral disclosures are necessary they must be accompanied or followed as soon as possible, but no later than ten (10) days after the disclosure, by the required statement prohibiting re-disclosure.

(c) *Additional prohibitions.* Confidential HIV-related information shall not be released pursuant to a subpoena. An order from a court of competent jurisdiction is required, pursuant to section 2785 of the Public Health Law and 42 CFR Part II, when applicable.

807.10 HIV-related Staff Training and Education

(a) *Training and orientation.* (1) Training and orientation of new staff must include information and instruction regarding:

(i) the legal prohibitions against unauthorized disclosure of confidential HIV-related information;

(ii) the use of protective equipment and preventive practices and recognition of circumstances which represent significant risk of contracting or transmitting HIV.

(iii) program policies and procedures established pursuant to this Part.

(2) All staff must be provided retraining on the material specified in this Part at least annually.

807.11 Severability

If any provision of this Part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without the invalid provisions or applications, and to this end the provisions of this Part are declared to be severable.