

# HIV/AIDS CONFIDENTIALITY LAW

## Article 27F Independent Training Module



# Training Objectives

- Provide overview of NYS HIV confidentiality law
- Increase awareness of importance of confidentiality
- Review who is “covered”; who is “protected”
- Learn how and when HIV information may be disclosed
- Be aware of personal responsibility in handling HIV related information

# Stigma Definition

AIDS-related stigma (or, more simply, AIDS stigma) refers to prejudice, discounting, discrediting, and discrimination directed at people perceived to have AIDS or HIV, and the individuals, groups, and communities with which they are associated.

# The Impact of HIV Stigma

- Creates situations where people do not respect each other and are more likely to:
  - Fear transmitting or contracting HIV
  - Fear behaviors associated with HIV that are already stigmatized
  - Assume people living with HIV/AIDS are responsible for becoming infected
  - Personal religious or moral beliefs: Having HIV/AIDS is a moral fault which deserves to be punished

# Negative Effects of HIV Stigma

- Lack/loss of family support
- Loss of job
- Lack of intimacy from partner
- Loss of housing
- Rejection
- Violence

# Basic Rules and Definitions

## ▶ ***NYS HIV Confidentiality Law:***

- Article 27F, NYS Public Health Law 1989
  - This law applies to all people and facilities providing health and/or Social Services, or who obtain the information pursuant to a special HIV release
  - The intent is to :
    - protect the confidentiality of HIV related info
    - Encourage voluntary testing and behavior change to avoid acquiring/transmitting HIV
    - Limit discrimination and harm to individuals

# The Rule is about Protected Vs. Covered Individuals

- Protected Individual:
  - Any person who has had an HIV-related test, or;
  - Has had an HIV related diagnoses



Everyone must sign a release to have a test....except Newborns; Federal Prisoners and military (Federal) are mandated without consent

# Who are Covered?

- Covered Individuals:
  - Any staff, employee, volunteer of an agency who are either certified, regulated, licensed or funded by the following entities:
    - DOH
    - OPWDD /OMH
    - OASAS
    - OCFS
    - DOC
    - DOPP
    - DSS



# Who are Covered?

- Any individual who has received HIV-related info from a Health or Human Service Provider through an executed “Authorization for Release” form
  - DOH-2557 (6/05)

# Activity-Who must Comply?

- Check those people on the list that you believe must comply with 27-F

# Basic Confidentiality Rule of Article 27-F is:

- You may NOT disclose any confidential HIV-Related information about a protected individual, unless:
  - You have an authorization for release
  - You are permitted to disclose it under one of the law's specific exceptions

# What is HIV-Related info?

- Any info concerning a person who has been tested for or diagnosed with HIV infection, HIV-related illness or AIDS
- Any info that identifies or reasonably could identify a person as having HIV infection, related illness or AIDS
- INCLUDING info about a person's contacts, partners, children

# How to Tell if Info is “Confidential HIV-Related Information”

- Must be able to answer yes to 4 questions:
  - Is it HIV related information?
  - Is it information about an identifiable individual?
  - Does it reveal testing or diagnosis of individual or partner/contact?
  - Is the information in the possession of someone “covered” by the law?

# Disclosure

- What does disclosing confidential info mean?
  - The release of any HIV-related information to someone else.  
Includes:
    - Oral (In person/telephone)
    - Written (Paper/written records)
    - Electronically (Computer/e-mail)
    - Passive/Active or Indirect Disclosure
    - Intentional/Unintentional

# In a Nutshell.....

- No-one who obtains HIV-related info in the course of providing health or human services may disclose this information without a signed “authorization for release”
- Article 27-F sets specific procedures and regulations about HIV testing

# Exceptions to the Law

- You may not need an “authorization for release” to disclose without consent when:
  - Authorized staff need to communicate internally to perform their duties
  - Medical and other health care providers need it in order to provide appropriate care (medical emergency)
  - Persons and agencies involved with Foster Care or adoption (limited circumstances)
  - Jail, prison, probation and parole employees who are designated as “need to know”



Perform their duties: coordinate services, Always document the disclosure  
Medical Care: when knowledge of the HIV info is Necessary, or needed to provide appropriate care or treatment



# Exceptions to the Law

- Parents and guardians of minors (limited circumstances; disclosure by a physician if necessary to provide care)
- There is a special court order
- Organizations, Committees and Government Agencies who **need** the info to supervise, monitor, administer or review/audit services
- Insurers **when needed** to pay for care/treatment
- Public Health officials when required by law (ie: HIV/AIDS reporting & partner notification)



Minors can be tested, but not treated for HIV without consent

# Internal Communication Rule

When can agency staff share HIV related information within their own agency?

- Authorized employees within the Agency may have access to and share confidential HIV-related information about clients without consent...but only when authorized by the “Need to Know” policy, and when employee(s) reasonably need the information in order to carry out their professional duties.

# Policy & Procedures

- Catholic Charities has an HIV Policy that outlines the following:
  - “Need to Know” list of job titles
  - Initial and yearly training on HIV and confidentiality
  - How we protect the confidentiality of records
  - Procedures on releasing information
  - Protocol that prohibits discrimination

# When deciding if you can release information...

- Do you have a valid HIV consent signed by the client authorizing the disclosure...

**OR**

- Does the requesting party meet one of the exceptions?  
**AND**...if you release the information...
- Document the request, date, content & recipient of the disclosure in the client's record on the "HIV Disclosure Log Sheet"
- Attach to the disclosure a statement prohibiting re-disclosure

# If you are unauthorized to make the disclosure...

- You have 3 options.....
  - Obtain Consent
  - Withhold or redact HIV related information
  - Do not send any information!



**Always err on the side of caution!**

# Inappropriate Disclosures

- Any employee who makes an unauthorized disclosure may be individually liable; Catholic Charities may be liable, or both
- Agencies and individuals who are found to have violated the HIV Confidentiality Law may face the possibility of:
  - Fines up to \$5000 for each violation
  - Up to 1 year in jail
  - Private lawsuits (Civil Court)

# Inappropriate Disclosures

- Any employee that engages in actions that result in disclosures that are not in keeping with our policy, will be subject to disciplinary action up to and including termination
- These disclosures will be reviewed on a case-by-case basis

# What About Discrimination?

- Article 27-F does NOT provide remedies for discrimination....this is covered under:
  - NYS Human Rights Commission
  - Federal Americans with Disabilities Act (ADA)



# Capacity to Consent

- Definition:
  - Capacity to Consent to a disclosure of HIV-related information means an individuals ability, without regard to age or physical/mental disability to..
    - Understand and appreciate the nature & consequences of a proposed disclosure...and..
    - Make an informed decision

# Capacity to Consent Rule

- If a protected individual has the “capacity to consent”, then they decide whether or not to test for HIV and decide whether or not to permit a disclosure

# Age is not the Determinate..

- Some minors will have the capacity to consent, and others will not
- Capacity to consent is a functional concept...not a legal one

# Consent for Health Care?

- Having the capacity for consent under 27-F only gives the person the right to decide to test or disclose...it does not give them the right to make other health care decisions
  - Mandated under Public Health Law
- If a person lacks the capacity to consent, a person “*authorized pursuant to law to consent to health care*” for that individual decides whether to test or disclose, and sign the consent

# Employment Issues

- ▶ Federal and state laws prohibit discrimination in employment against any individual who has, or is perceived to have, a handicap or disability (mental or physical) if that individual is otherwise qualified to perform the job
- ▶ Working with an individual who is HIV infected or has clinically defined AIDS, does not pose a risk of transmission among co-workers

# Right to Know!!!????!!!!

- Supervisors and co-workers **DO NOT** have a right to know an employee's HIV status
- No applicant for employment or employee is required to disclose their HIV status as a condition of employment
- If an applicant/employee chooses to share their status with agency personnel, the information will not be shared with **ANYONE** without their written consent...breaches of confidentiality will be subject to severe disciplinary action

# Catholic Charities (as an employer) must comply with 27-F if:

- ▶ Catholic Charities obtains the information in the course of providing services;
- ▶ The information is received via an HIV consent;
- ▶ There are federal and state laws that protect employees from discrimination

# Disclosures Regarding Newborns and Children

- All newborns in NYS are tested for HIV, whether or not the mother consents...mother must be informed about the purpose and need for testing
- Pregnant women can only be tested with her informed consent
  - Results will be forwarded to the delivering hospital...no consent is required



# Partner Notification

- Physicians (only) may notify contacts if:
  - The notification is medically appropriate;
  - There is a significant risk for infection;
  - client has been counseled of the need to notify;
  - Client is informed of intent to notify, and that DOH contacted
    - Client can choose to have Physician or DOH conduct the partner notification
    - Sources are NOT identified
    - Domestic Violence screen first

# Domestic Violence

- If there are Suspected or confirmed domestic violence issues, HIV information about the child can be withheld from the Father
  - PHL Article 18

# Documentation & Recordkeeping

- All Human Service providers have an obligation to maintain client records, kept in secure files with access granted only to authorized personnel
- **HIV information will only be recorded in the clients record if the appropriate staff determine that the information is necessary for providing the best possible care**
  - This will be determined by a Supervisor/Manager in consultation with the Division Director
- No HIV related information will be noted in the billing section, nor will records be “flagged” to indicate their HIV status
- **Once HIV-related information is documented-it is covered under 27-F**

# Agency Disclosure Process & Documentation

- Requests from outside Agencies for HIV related information will be referred to the Division Director
- Any subpoenas or court order received for the disclosure of HIV related information will be referred to the Executive Director or Deputy Director

# Disclosure Process & Documentation

- The Executive/Deputy/Division Director will determine if the disclosure is authorized because:
  - The client has signed a valid consent (DOH-2557) or...
  - The request is authorized under one of the exceptions to the general rule

# Disclosure Process & Documentation

- If authorized, the Division Director will make the disclosure, and will also:
  - Document the disclosure in the client record on the HIV Disclosure Log Sheet
- If un-authorized, the Division Director will:
  - Ask the client if they want to disclose, and if yes obtain required written consent; or...
  - If no, inform the requesting Agency/Individual that they can not have access to information without proper written consent

# Occupational Exposure

- If there is an exposure, a disclosure of HIV-related info may occur IF:
  - The incident involves exposure to blood or other potentially infectious bodily fluid
  - The exposed individual had contact with blood or infectious bodily fluid to mucus membranes, non-intact skin, or to the vascular system
  - The exposure occurred during the performance of professional/work related duties
    - New Laws

# Client Rights under Article 27-F & HIPAA

- Providers are required to inform clients about disclosures of HIV confidential information
  - HIPAA also requires providers to provide, upon request, an accounting of certain disclosures
    - Exceptions: internal communication rules; initial disclosure to insurance; QI/Program monitoring agents
- Access to Records
- Right to Amendments (HIPAA)
- Right to receive confidential communications (HIPAA)
- Right to request restrictions on use or disclosure (HIPAA)



# How to Finish Training

- ▶ Make a copy of the Exam
- ▶ Complete Exam
- ▶ Give a completed copy of the exam to Katie Chaffee, HR.