

CHAPTER 10
**Legal
Issues**



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The New York State HIV Confidentiality Law protects the privacy of all people with HIV or AIDS.

How does New York State protect the privacy of my child with HIV?

New York State has a law that protects your child's privacy and the privacy of all people with **HIV** or **AIDS**. The **HIV Confidentiality Law** (Public Health Law Article 27-F) protects HIV information for people who have been **exposed** to HIV, tested for HIV, or have HIV or AIDS. This information includes:

- verbal reports or written records of any medical tests that show a person has been tested for **HIV**, has HIV, or has a medical condition caused by HIV.
- verbal reports or written records of a person who has received medical treatments for HIV or an illness caused by HIV.
- other information that shows a person has or may have HIV or an illness caused by HIV.

The **HIV Confidentiality Law** states that health care providers, social service providers, and anyone else who gets HIV information from a special written HIV release are bound by law to keep **HIV** information private. If they share a person's HIV information without written permission, they can get a fine of up to \$5,000 and/or one year in jail.

The **HIV Confidentiality Law** holds no penalty for your family members, friends, neighbors, or your child's teachers who do not keep **HIV** information private. For this reason, it is important to be careful about sharing your child's HIV information.

Special Note for Foster Parents:

Under New York State Law, the following persons or agencies can have access to **HIV** information about a child in foster care:

- foster parents or approved kinship foster parents who have responsibility for the foster child's medical care.
- health care providers who are caring for the child in foster care.
- authorized agencies involved in the foster care or adoption of the child or another agency if the child is transferred.
- prospective adoptive parents of a child in foster care who is legally freed for adoption.
- the adoptive parents of a child in foster care.
- the **birth parents** of a child in foster care when the child is returned to their care (if the child lacks **capacity to consent**).
- the **birth parents** of a child in foster care when the child is returned to their care (if the child has the **capacity to consent** and provides written consent to disclose the information).
- the attorney of the child in foster care for the purposes of representing the child.

Why has my child's name been reported to the New York State Department of Health?

The **HIV Reporting and Partner Notification Law** requires all doctors, hospitals, and laboratories to report the names of people with **HIV** or **AIDS** to the **New York State Department of Health**. The New York State Department of Health needs to know:

- how many people in New York State have HIV.
- how they got HIV.
- the areas of the State where people with HIV live.

This information helps the **New York State Department of Health** plan prevention programs and make sure that health care and support services are available to meet the needs of people with **HIV**. The Health Department keeps all information about people with HIV **confidential**. The New York State Department of Health does not share any HIV information with other agencies or individuals including: police; welfare agencies; Bureau of Citizenship and Immigration Services; insurance companies; employers; or landlords.

All information collected by the Department of Health is confidential.

When can I share my child's HIV information?

To make sure your child gets the best possible care, it is important to share your child's **HIV** information with his/her doctors, nurses, **dentist**, **social worker**, **mental health professional**, or other health care providers.

HIV information cannot be shared between health and social service providers without written permission.

General release of information

If your child is going to get a health care or social service, you will be asked to sign a **general release of information** form to have your child's health information, including **HIV** information, shared with others. By signing the general release of information form, the health and social service providers within the hospital or clinic will be able to share information with each other to give your child the best possible care. It also lets the health care or social service provider get paid by sharing your child's service information with an insurance company, like **ADAP**, **ADAP Plus**, **Child Health Plus**, or **Medicaid**.

Special Note for Foster Parents:

As a foster parent, you may share **HIV** information about your foster child with others only if it is necessary to provide your foster child with medical care, treatment, or supervision. Talk with your caseworker before discussing your foster child's HIV status.

Release of HIV related information

There are also 2 **HIV** information release forms you may decide to sign. These forms let you decide who can have your child's HIV information. Both forms give you an option to stop your child's information from being shared even if you have signed the forms.

Authorization for Release of Confidential HIV Related Information Form

This form gives the doctor permission to share your child's **HIV** information with other health care and social service providers. For example, this form could be used if your child needs to see a **mental health professional**. This form shows 3 things:

- name of a specific person who will get your child's HIV information.
- reason why your child's HIV information will be shared.
- length of time you say it is OK to share this information.

Authorization for Release of Confidential HIV Related Information Case Management Programs Form

This form is used by the **case manager** to plan and coordinate your child's care. For example, this form could be used if your child needs services at different locations in your community. Your child may need a support group at a community agency, a physical therapist at a clinic, and a speech

therapist in a private office. This form also shows 3 things:

- name of an agency that will provide services to your child.
- reason(s) why your child's **HIV** information will be shared.
- length of time you say it is OK to share the information.

Foster parents should be sensitive to their foster child's desire to keep his/her **HIV** information private. When appropriate, foster parents should have open and honest discussions with their foster child about sharing his/her HIV information before it is shared with others.

What if my child's HIV information is shared without written permission?

If you are the **birth parent** or **guardian** of your child and you believe that a health care provider, social service provider, or anyone else who gets HIV information from a special written HIV release has shared your child's **HIV** information without getting written permission, you may contact the **New York State Department of Health** to file a complaint. If you have any questions or concerns about **confidentiality** or **disclosure**, please call:



New York State Department of Health HIV Confidentiality Hotline
1-800-962-5065

You can file a complaint with the New York State Department of Health if you believe a health care provider, social service provider, or anyone else who gets HIV information from a special written HIV release has shared your child's HIV information without written permission.

As the birth parent or guardian, you must give your OK for your child to get most medical treatments.

Who can give permission for my child or adolescent to get medical care and treatment?

Birth parents and guardians

If you are the **birth parent** or **guardian** of your child, your permission (**consent**) is needed for most of your child's medical treatment. For example, for your child to get treatment for **HIV**, your consent is needed. Your consent is not needed for services listed on page 10-9.

Foster parents

If you are a foster parent, under no circumstances are you allowed to give your permission for your foster child to get health care. Your foster child's **birth parent** or **guardian** must **consent** to health care for his/her child. The **local commissioner of social services**, or the person he/she identifies, may give consent for your foster child's medical care and treatment if:

- the birth parents' legal rights have been surrendered or terminated, and the foster child is freed for adoption.
- if the child had been taken into protective **custody** because of abuse or neglect or had been adjudicated as an abused or neglected child.
- where the **birth parent/guardian** has delegated their right to consent to the **local commissioner of social services**.

Be sure your **caseworker** gives you a letter stating that your foster child is in the **custody** of the **Local Department of Social Services** (LDSS) and you are the foster parent. The letter should also name the person to contact who can give permission for the doctor to provide care (have blood work and tests done, admit to the hospital, etc).

(See **Special Information for Foster Parents**, Who can consent to health care for my foster child? page 9–14.)

Special Note for Foster Parents:

As a foster parent, you are never allowed to give your OK for your foster child to get health care.

Minors

Anyone younger than 18 years old, including a child in foster care, is a **minor**. In New York State, there may be times when a minor does not need anyone to say OK for him/her to get health care. If a minor can understand the risks and benefits of treatment, he/she does not need anyone else to **consent** for:

- emergency health care.
- certain mental health services.
- certain alcohol and drug abuse services.
- reproductive health care. Reproductive health care includes: family planning; abortion; prenatal care; care during labor and delivery; **HIV** testing and care for **STDs** (sexually transmitted diseases).

Minors who can understand the risks and benefits of treatment can sometimes get health care without the OK from their parent, guardian, or the local commissioner of social services.

Some **minors** can **consent** to all of their own health care. This includes minors who are married or parents. Also, minors who are pregnant can consent to health care related to their pregnancy.

If you feel your child has been discriminated against because he/she has HIV, contact the New York State Division of Human Rights Office of AIDS Discrimination Issues.

Can my child be denied health insurance?

No. In New York State **health insurance** coverage cannot be denied just because someone has **HIV**. For more information call:



New York State Insurance Department
1-800-342-2736

What if my child is being discriminated against because he/she has HIV?

If you feel your child is being **discriminated** against in employment or in a place where the public is served, such as a doctor's office or restaurant, you may be able to file a complaint.

Ask yourself 2 questions:

1. Is my child being treated differently than anyone else?
2. Is my child being treated differently because he/she has **HIV**?

If your answers to both questions are “yes,” you may be able to file a complaint. Make sure you take notes that tell what happened, when it happened, where it happened, and who was involved.



Call your legal advisor or call the New York State Division of Human Rights Office of AIDS Discrimination Issues.

1-800-523-AIDS (1-800-523-2437)
In New York City: 212-480-2522

Why is it important to plan for my children’s future?

All parents need to make a plan for their children’s future care. Just in case parents are not able to care for their children, it is important to choose someone who will be responsible for raising their children. This is especially important if you are a parent with a life-long health condition, like **HIV**. Making these decisions will be very hard and very emotional. But, it will give you and your children peace of mind.



Once you make a plan, you can always change it. As time goes by, it is a good idea to look at your plan and make changes, if needed. For example, as your children grow older, you may find another person who is better able to care for adolescents.

All parents need to make a plan so their children will be cared for, if needed.

Be sure the person you choose is someone who can handle the job.

How do I make a plan for my children's future?

You may want to talk to other people you trust, like family, friends, **social worker**, or clergy. You want your children to be with someone who will love them, care for them, and respect your wishes about raising your children. You will also want to make sure your children like the person you choose. If your children are old enough, they may also give you some suggestions about who they would like to care for them.

People on your list may include: the child's other parent; your parents; your sister or brother; your in-laws; another relative; or a close friend. Make sure the person you pick is:

- healthy enough to care for your children.
- willing to take on the responsibility.
- able to get along well with your children.

You also need to think about whether the person you pick would need financial or housing assistance or other support services to care for your children.

Talk to your legal advisor about your choices.

Once you have an idea about who you want to care for your children, get professional advice to help you make the best plan for you and your children. There are counselors and lawyers who can help you. For information about free or low-cost counseling and legal services in your area, call the **HIV Care Network** in your area.

(See **More Information: Telephone Numbers**, page 11–5.)

Your legal advisor can help you make the best plan for you and your children.

There are a number of different legal arrangements you can make for the future care of your children. Talk with your counselor and lawyer to pick the **custody** choice that is best for you and your children. Custody options include:

- **guardianship/legal custody.**
- **standby guardianship.**
- **kinship foster care.**
- foster care.
- **adoption.**
- adoption with foster care first.

Some of these **custody** options allow your children to stay with you as long as possible but also spend time with the other family to get used to their new home. In other options, you must temporarily or permanently give up legal rights to your children. Your counselor or lawyer will explain of all of these options to help you decide what is best for you and your children.

Tell people who need to know.

Once you have made a decision and had the necessary legal paperwork done, tell people who need to know about the arrangements you have made for your children's care. This will include:

- the **guardian** you choose.
- your children if they are old enough to understand.
- your children's other parent(s).
- other relatives who should know.
- your **case manager.**
- your child's health care team.

Tell people who need to know about the arrangements you have made.

