HIV Confidentiality and Testing
Objectives

  - Basic requirements
  - Applicability
  - Protections
  - Disclosure

- Provide an update about the 2014 changes in the Law
  - HIV testing
HIV Testing and Confidentiality Law

- Found in
  - NYS Public Health Law 27-FPart 63 of the Department of Health Regulations
- Governs
  - HIV confidentiality
  - HIV testing
  - HIV reporting and partner notification
- More protective of HIV-related information than HIPAA
Basic Requirements of the Law

- All employees receive education regarding:
  - Prohibition of disclosure of HIV-related information
  - HIV case reporting
  - Partner notification laws
- Updates are provided to employees when the law changes
- There must be protocols for ensuring that:
  - Records are maintained securely
  - Records are used for the intended purpose
Basic Requirements of the Law (continued)

- There must be procedures for handling requests by third parties for HIV-related information.
- Anti-discrimination protocols must be in place.
  - It is illegal for VNSNY staff to discriminate against any individual who is qualified to receive our services solely because that person has HIV/AIDS or is perceived as having HIV/AIDS.
The Law Applies to.......

- Health or social service providers
  - Those who obtain HIV-related information as a result of providing health or social services
    - Includes...
      - CHHA
      - Hospice
      - Mental health programs
      - The Nurse Family Partnership (NFP)
      - Nurses or physicians employed by VNSNY CHOICE
  - Those who obtain HIV-related information due to a signed release by the client
  - VNSNY CHOICE staff who provide services to SelectHealth members
Whose Information Does the Law Protect?

• A “protected individual” - any person who has
  • Been tested for HIV
  • HIV infection
  • Been diagnosed with an HIV-related illness, or
  • AIDS
Whose Information Does the Law Protect? (continued)

• A “Contact” means any person who is…
  • The spouse or sexual partner of a Protected Individual
  • A person who has shared needles or syringes with a Protected Individual
  • A person who may have been occupationally exposed to HIV by a Protected Individual

• Deceased Protected Individuals
Q: What Information is Protected?

A: Written or oral HIV-related Information

“HIV-related information” includes whether or not an individual has:

- Had an HIV test (whether positive or negative)
- Has HIV, an HIV related illness, or AIDS
- Has been treated/is being treated for HIV
- Takes medication for HIV
- Is a contact of someone with HIV (spouse, sexual, or needle-sharing partner)
Knowledge Check

There is information in a patient’s record that he is HIV-positive. There is another notation in the patient’s record that he lives with his spouse at the same address. In addition, a COC entry documents that the HHA had an accidental finger stick from a used insulin syringe/needle.

Who is protected under Article 27-F?

- The patient  Yes □  No □
- His spouse  Yes □  No □
- The HHA  Yes □  No □
Knowledge Check

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Who is protected under Article 27-F?

- The patient: Yes [✓️] No [ ]
- His spouse: Yes [✓️] No [ ]
- The HHA: Yes [✓️] No [ ]
Knowledge Check

Which of the following are examples of protected information under Article 27-F?

Yes □  No □  A notation in the client’s record that the client has had an HIV test or been offered a test.

Yes □  No □  A statement that a person has had an HIV-related illness.

Yes □  No □  Information that a person is taking a well-known HIV medication.

Yes □  No □  A notation that a patient’s HIV test results were negative/positive or not definitive.

Yes □  No □  A note in a patient’s record that she was encouraged to go for HIV testing.

Yes □  No □  A note in a client’s record that he uses IV drugs.
Knowledge Check

Which of the following are examples of protected information under Article 27-F?

Yes ☑ No □  A notation in the client’s record that the client has had an HIV test or been offered a test.

Yes ☑ No □  A statement that a person has had an HIV-related illness.

Yes ☑ No □  Information that a person is taking a well-known HIV medication.

Yes ☑ No □  A notation that a client’s HIV test results were negative/positive or not definitive.

Yes □ No ☑  A note in a patient’s record that she was encouraged to go for HIV testing.

Yes □ No ☑  A note in a client’s record that he uses IV drugs.

Answer
Disclosure of HIV Information

The General Rule

You can only share HIV-related information to other providers or employees if....

• It is necessary for the patient or member to receive services, or
• You have a patient or member consent that specifically authorizes the release of HIV information.
When Can HIV Information Be Disclosed Without an Authorization?

• To employees or health care providers who need the HIV information to provide HIV-related treatment to a patient or member.

• To monitor health care and disease prevention.

• Other limited circumstances:
  ▫ To prospective foster parents by foster agencies.
  ▫ Special court order issued by a judge.
When Can HIV Information Be Disclosed Without an Authorization?

• **Occupational Exposure**
  ▫ An on the job exposure to HIV that creates a significant risk of HIV transmission; information may be disclosed without the patient’s consent if:
    • An incident report has been filed;
    • The requested information is needed for a decision about post-exposure prophylaxis;
    • The request is documented in the exposed worker’s medical record; and
    • The VNSNY Chief Medical Officer determines that there is a risk of transmission.
When Can I Share HIV-Related Information with Other Employees within VNSNY?

- You are an employee who is in a job that is “Need to Know”.
  - Example: a nurse who is covering for another nurse and needs to provide HIV-related care to a patient, such as teaching about the side effects of a new HIV medication.

- You have a reasonable need for that information in order to perform your duties in connection with the provision, supervision, or administration of services to the patient or member.
  - Example: someone who works in billing might need to know an HIV-related diagnosis so the patient’s risk score is adjusted accordingly.
When Can I Share HIV-Related Information with Other Employees within VNSNY? (continued)

- You have the patient’s or member’s written consent.
When Sharing HIV-Related Information with Other VNSNY Employees

- Remember to……..
  - Hold HIV-related conversations about a patient or member or other Protected Individual in an area where the conversation cannot be overheard by unauthorized persons
  - Applies to phone and face-to-face conversations.
Sharing Information with Other VNSNY Employees

A patient’s or member’s HIV status or other HIV-related information cannot be shared with anyone solely for the purpose of infection control because

All health care providers need to use standard precautions when providing care to all patients.
Knowledge Check

Case Scenario

During a home visit, the Home Health Aide takes you aside and tells you she just found out that the patient is HIV +. She says, “I should have been told about this when I was given the case. I have a right to know.”

Questions:

1. Does the Home Health Aide have a right to know?  
   Yes ☐  No ☐

2. Does another nurse who is seeing the patient next week need to know?  
   Yes ☐  No ☐  Maybe ☐

3. What are the reasons that the home health aide was not told about the patient’s HIV status? (Choose all that apply.)
   a) The patient’s HIV status is protected under NYS Law.
   b) The HHA does not need this information to perform her tasks.
   c) The nurse forgot to tell her.
   d) There is no reason for her to know – she should be using standard precautions with all of her patients.
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Questions:

1. Does the Home Health Aide have a right to know?
   Yes □ No □

2. Does the nurse who is covering for you next week need to know?
   Yes □ No □ Maybe □

3. What are the reasons that the home health aide was not told about the patient’s HIV status? (Choose all that apply.)
   a) The patient’s HIV status is protected under NYS Law.
   b) The HHA does not need this information to perform her tasks.
   c) The nurse forgot to tell her.
   d) There is no reason for her to know – she should be using standard precautions with all of her patients.
Disclosing to Those Outside of VNSNY

- When can I disclose to _other_ health care providers?
  - When the information is necessary for the provider to give appropriate care or treatment to the client, his/her child, his/her spouse, or sexual or needle-sharing partner.
**Disclosing to Those Outside of VNSNY**

- **When can I disclose to an insurance agency?**
  - So that VNSNY may get paid
  - Disclosure can be done only…
    - If a general or specific consent form has been signed, and
    - The HIV related information is necessary for reimbursement.
Disclosing to Those Outside of VNSNY

- When can I disclose to an oversight agency?
  - If the information is reasonably necessary for program monitoring, evaluation, and review
NYSDOH and Healthcare Providers
New in 2014

- Patient-specific identifying information may now be shared between local and state health departments and healthcare providers currently treating the patient.
  - Designed to promote patient linkage and retention in health care
  - Allows health departments to work directly with providers to identify patients who may have fallen out of care
Reporting HIV-Related Information

- Mandated Reporters
  - Only physicians, nurse practitioners, physician assistants, or laboratories performing an HIV test are mandated to report HIV/AIDS cases to the NYSDOH.
  - The NYSDOH or its designee is responsible for notifying known contacts of a person infected with HIV.
Partner and Contact Notification

- **ONLY** physicians and special Department of Health staff are permitted to notify identified partners or contacts of HIV exposure and risk.

  - Physicians **do not have** a legal duty to notify at-risk partners.

  - It is a **violation of the law** for a non-physician to make this notification (without the HIV+ individual’s specific, written release).
Partner and Contact Notification

• For non-physicians, possible options include:

  Counseling the HIV+ patient or member to make disclosure or not engage in the high risk behavior

  Obtaining a written release from the patient or member allowing you to disclose his/her status to the contact

  Consulting with agency staff physician(s) about making the notification.
The VNSNY physician should contact the Privacy Officer or the Legal Department before making such disclosure.
Knowledge Check

Case Scenario

Your patient confides that he is having unprotected sex and has no intention of disclosing his HIV+ status to his partner. Up until now, you did not know your patient’s HIV status.

Question:

What is the best action for you to take? (Select all that apply)

a) Explore the reason for non-disclosure and counsel the patient to make the disclosure.

b) After the visit, call the patient’s partner and disclose the information – the partner has the right to know.

c) Contact the patient’s physician and ask him to make the disclosure.

d) Demand that the patient sign an HIV release.
Your patient confides that he is having unprotected sex and has no intention of disclosing his HIV+ status to his partner? Up until now, you did not know your patient’s HIV status.

Question:

What is the best action for you to take? (Select all that apply)

✔ a) Explore the reason for non-disclosure and counsel the patient to make the disclosure.

   b) After the visit, call the patient’s partner and disclose the information – the partner has the right to know.

   c) Contact the patient’s physician and ask him to make the disclosure.

   d) Demand that the patient sign an HIV release.
Self Disclosure by an Individual

• Any individual with HIV may inform any other person about his/her own HIV status.

• An individual’s friends and family are not bound by Article 27-F or HIPAA.
  ▫ They can legally re-disclose this information to anyone.

• Patients and members should be provided with counseling about the possible consequences of such disclosures.
Releasing HIV information inappropriately is professional misconduct and a violation of the law and VNSNY Policy.

When in doubt, do not disclose...

Ask your supervisor or the Privacy Officer
HIV Testing

HIV testing must be offered to all persons between the ages of 13 and 64 receiving:

• Inpatient services
• Emergency department services at a hospital
• Primary care services from:
  • An outpatient department
  • A physician
  • A clinic
HIV Testing (continued)

- Only oral consent is required for HIV testing
  - Must be noted in the medical record
  - Any person, no matter what age, can consent to an HIV test if they have capacity.
    - A representative with authority to act on the individual’s behalf may consent.
  - Patients may decline an HIV test
  - Consent is in effect until revoked
HIV Testing (continued)

• HIV Test Results
  ▫ Those who test negative for HIV must be provided with information about:
    • Coping with the results
    • Discrimination
    • Getting tested in the future
    • How to protect against HIV infection
HIV Testing (continued)

• HIV Test Results
  ▫ A person who tests positive for HIV must also be provided with information about:
    • How to obtain a medical evaluation, treatment and counseling
    • How to prevent further exposure to HIV
    • How cases of HIV must be reported to NYSDOH
    • The need to cooperate with partner notification efforts
      • Partner notification can be done without revealing the name of the person who tested positive
The VNSNY nurse has completed a UASNY assessment on an adult home resident and is discussing the findings with the adult home caseworker. The caseworker comments on how the resident is “such a ladies man” and states, “He is really getting close with the woman who lives next door to him.” The nurse is aware of the resident’s + HIV status.

Questions:

1. Is this HIV-related information about the adult home resident protected under Article 27-F?  
   Yes ☐  No ☐

2. Can the VNSNY nurse disclose this information to the adult home caseworker?  
   Yes ☐  No ☐

3. Can the nurse notify the resident’s potential contact about his HIV status?  
   Yes ☐  No ☐

4. Can the nurse counsel the resident about not engaging in high risk behavior?  
   Yes ☐  No ☐
The VNSNY nurse has completed a UAS assessment on an ALP resident and is discussing the findings with the ALP caseworker. The caseworker comments on how the resident is “such a ladies man” and states, “He is really getting close with the woman who lives next door to him.” The nurse is aware of the resident’s + HIV status.

Questions:

1. Is this HIV-related information about the adult home resident protected under Article 27-F?  
   Yes ✓  No □

2. Can the VNSNY nurse disclose this information to the adult home caseworker?  
   Yes □  No ✓

3. Can the nurse notify the resident’s potential contact about his HIV status?  
   Yes □  No ✓

4. Can the nurse counsel the resident about not engaging in high risk behavior?  
   Yes ✓  No □
Knowledge Check

Case Scenario

Your patient mentions to you that he recently had an HIV test and was surprised he did not have to sign a piece a paper authorizing the test. How do you respond?

a) “I’m surprised too.”

b) “That wasn’t right. They should have had you sign a release.”

c) “You should make a complaint to the NYS Department of Health.”

d) “The law changed in April, 2014. Written consent for an HIV test is no longer required. Verbal consent is permissible.”
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c) “You should make a complaint to the NYS Department of Health.”

d) “The law changed in April, 2014. Written consent for an HIV test is no longer required. Verbal consent is permissible.”
End of training

If there are any questions, please contact the Randi Seigel, VP of Compliance & Regulatory Affairs and the Privacy Officer

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