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TITLE: HIV-AIDS CONFIDENTIALITY LAW OVERVIEW

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[video transcript]

Welcome to the webinar, HIV/AIDS Confidentiality Law Overview. My name is Sally Friedman. I'm an attorney at the Legal Action Center and will be your trainer during this webinar. In case you're not familiar with the Center, we're a nonprofit law firm that does policy and legal work to fight discrimination against and protect the privacy rights of people with HIV/AIDS, substance use disorders, and criminal records. We have worked extensively on the issue of HIV confidentiality, including through trainings and publication of educational materials about how to comply with a confidentiality law. The objectives of this webinar are to give you a baseline understanding of New York State's HIV confidentiality law, which is in Article 27-F of the Public Health Law. This law protects the confidentiality of HIV-related information about people who receive services from most New York health care or social service providers. Throughout the training, I'll refer to it simply as Article 27-F. Article 27-F also spells out the rules for HIV testing. This training will not go into HIV Testing Law in depth, but I will point out some important changes in law that occurred in 2014. In the webinar, you'll also get a basic understanding of how New York's HIV confidentiality law relates to HIPAA. As you probably know, HIPAA is the federal law that requires most health care providers to maintain the privacy of what HIPAA calls "protected health information." By the end of the webinar, you should be able to state some of the circumstances in which you are permitted to disclose HIV-related information about your clients or patients. We call these the exceptions to the confidentiality law's non-disclosure rule. You also should be able to complete an HIV release form properly, and finally, should be able to describe the legal consequences for violating the HIV confidentiality law. We'll start out reviewing the basic requirements of Article 27-F and HIPAA, whom they apply to, whom they protect, and what type of information they protect. Then we'll discuss the most common exceptions to these laws, and finally, we'll discuss enforcement. Before jumping into the substance of the training, I want to point out some resources you might want to consult. I'll be referring to some of them during the webinar, and most are on the Legal Action Center's website. To locate them, follow the instructions on your screen. The first is a sample flow chart showing the confidentiality law. Next are two HIV release forms, one for HIV information only, and the other for HIV, mental health, and alcohol and drug treatment information. The next is a sample notice prohibiting re-disclosure. And the final two are for filing complaints under Article 27-F and HIPAA. Another extremely helpful resource is our book, HIV/AIDS Testing, Confidentiality, and Discrimination: What You Need to Know About New York Law. It has answers to most questions that will come up in your day-to-day work. And if you're responsible for developing or enforcing your agency's HIV confidentiality policies and procedures, which you're required to have under Article 27-F, you definitely should look at our Model HIV Confidentiality Policies and Procedures. They can save your agency a tremendous amount of time and headache and help ensure compliance with the law. I might also point out that Legal Action Center conducts a statewide webinar about once a year about how to maintain and create your HIV/AIDS confidentiality policies and procedures, so check back with our website about when we might hold that training. Finally, to learn more about New York's HIV Testing Law, you can consult the Department of Health FAQs. They also cover the few changes to the law that occurred in 2014. So now let's get started discussing the basic confidentiality rules under Article 27-F and HIPAA. Starting with Article 27-F. As I said, this is the New York state law that governs HIV testing and HIV confidentiality that also includes the confidentiality of HIV case reporting and partner

notification. The details of the HIV Case Reporting and Partner Notification Law are in a different part of the Public Health Law, which is Article 21. This webinar will cover mainly the confidentiality provision of Article 27-F and not the testing provisions. But I wanted to flag some important changes to the HIV Testing Law that went into effect in April 2014. Then New York State's legislature did away with a requirement for written informed consent for HIV testing except in correctional facilities. This is a major change, as for years the law required separate written consent for an HIV test, but now it does not. But the law still requires informed consent. This means that at a minimum, every time an HIV test is done, the physician or other person conducting the test must notify the person who's being tested that an HIV test will be conducted. The person who's being testing must receive the opportunity to decline the test, that is to say no. And finally, the person ordering the test must document the notification in the patient's record. So the 2014 changes haven't done away with a requirement for informed consent, but they've removed the requirement that such consent be in writing. Now, why does New York have a law that singles out HIV information for special protection? It's because, as you likely know, HIV information is highly stigmatizing. Without heightened confidentiality protection, people might avoid getting tested. The law tries to strike a balance between providing the level of confidentiality that's necessary for people to feel safe coming forward to get an HIV test while also permitting their health and social service providers to share information when necessary to provide health care and other services. First I'll explain who has to follow Article 27-F. This law doesn't apply to everyone in the state, but it does apply to these three groups of people. First, anyone who receives HIV-related information about a protected individual while providing most health or social services. Common examples are health care professionals and health facilities, including mental health and alcohol and drug programs, foster care agencies, and school nurses. You may be taking this webinar because you work in such a health or social service agency. The second type of person who has to follow the law is someone who receives HIV-related information through a written release. For example, if your client sends a release form permitting you to discuss his HIV status with his employer, then the employer becomes bound by Article 27-F, even though the employer is not a health or social service provider. A lot of people don't realize that Article 27-F extends this far, and maybe you're one of them. But it's important to know that, because it's a way you can protect your client's HIV information. If your client wants to disclose his HIV status to someone who doesn't have to follow Article 27-F, it might be a good idea to suggest that you make the disclosure after your client signs a release form. That way the person receiving the information will be legally obligated to protect its confidentiality. The third group of entities that has to follow Article 27-F are New York State and local governmental agencies that provide, supervise, or monitor health or social services. Typical examples are the Department of Health, Department of Corrections, New York City Human Resources Administration, or other local Departments of Social Service, and the state Office of Alcoholism and Substance Abuse Services. Article 27-F's non-disclosure rule does not apply to the protected individual him or herself. By protected individual, I mean the person who's been tested for or diagnosed with HIV or AIDS. So you may legally disclose your own HIV status to anyone you want. You can go on TV, you can blog about it. The law doesn't prohibit that. This law also does not apply to friends and family of a protected person. If you disclose your HIV status to your friends, to your siblings, or to the guy next door, they may legally re-disclose it. That is important to know. The same holds true for landlords. So if there's a reason why your client's or patient's landlord needs to know their HIV status, it might be best to have them sign a release form authorizing you to make the disclosure. As I just mentioned, that would bring the landlord under Article 27-F. Let's turn to HIPAA. Unlike Article 27-F,

which is a New York state law, HIPAA is a federal law. It sets minimum safeguards to protect the privacy of medical records and what it calls "protected health information." HIPAA applies to all protected health information, and applies whether the information is in electronic, written, or oral form. Who has to follow HIPAA? HIPAA applies to health care providers, health plans, which are mainly insurance companies, and health care clearinghouses if they transmit protected health information electronically for billing, payment, and certain other transactions. Anyone who has to comply with HIPAA is called a covered entity. It's important to know whether the agency you work for is covered by HIPAA, but even if it is not, you still need to understand HIPAA's basic requirements, because you'll inevitably be interacting with HIPAA-covered entities during the course of your work. If you're taking this webinar, the health care facility or agency you work for most likely has to comply with both Article 27-F and HIPAA. Almost all health care providers in New York do, and so do many social service agencies who provide COBRA case management services. There's another federal privacy law and set of regulations that governs the confidentiality of alcohol and drug treatment and prevention records. It's known as 42 C.F.R. Part 2, because the regulations are entitled 42 of the Code of Federal Regulations. That's the C.F.R. part. Alcohol and drug treatment and prevention providers in New York State need to comply with all three laws: 42 C.F.R. Part 2, HIPAA, and New York State's HIV Confidentiality Law. I won't be covering the alcohol and drug confidentiality regulations in this webinar, but I wanted to point them out as another federal confidentiality law that can come into play. Getting back to HIPAA and Article 27-F. What do you do if HIPAA and Article 27-F have different rules for the same situation? For example, what if HIPAA says you may disclose protected health information in one instance, but Article 27-F says you may not disclose HIV information in that same exact circumstance? The rule of thumb is that you follow HIPAA unless Article 27-F is more stringent, which means that it provides greater privacy protection or gives people more rights. Article 27-F is usually more stringent than HIPAA, so nine out of 10 times, you follow Article 27-F. Now that I've explained who has to comply with Article 27-F and HIPAA, I'll discuss what protections they offer. They both prohibit disclosure of health information, but as I mentioned, HIPAA covers nearly all personal health information, and Article 27-F covers only HIV-related information. Article 27-F says that health and social service providers generally may not disclose any HIV-related information obtained while providing a health or social service or pursuant to a release form. I'll explain what each of these bolded terms mean, because they are legal terms. So what exactly does the law mean by HIV-related information? The term includes information that someone has had an HIV test, whether it's positive or negative. It also includes that someone has AIDS, HIV infection, or has been treated for or is being treated for HIV or that someone has an HIV-related illness. And it includes any information that identifies or reasonably could identify someone as having any of these conditions. For example, if you mention that a patient had PCP pneumonia, that's HIV-related information. HIV-related information also includes the fact that someone takes medication that's specific to HIV disease. Finally, it includes information that someone is a contact of someone with HIV. A contact is a spouse or a sexual or needle-sharing partner of someone with HIV. It's time for our first case study. Don is sitting in the waiting room at a clinic along with many other patients. A clinician enters the waiting room and says, "Don, please come in for your HIV test results." Did the clinician disclose confidential HIV-related information about Don? Yes, he did. As I just mentioned, the fact that someone has taken an HIV test, even without the result, is confidential HIV-related information. It's really important to point out that the confidentiality protections in this law do not just apply to your clients or patients. The law protects the confidentiality of any HIV-related information you obtain about anyone while you are providing a

health or social service even if the information's about someone who has had no contact with your agency and who you've never met. And as mentioned before, the law applies to any HIV-related information you get pursuant to a written release. And you need to maintain the confidentiality of this information forever, even after you leave the job you had when you got the information. So if you quit the health care profession and you become a teacher and your new colleague turns out to be an HIV-positive patient from your last job, you may not disclose that to people in your new job or to anyone else. Let's see how that plays out in our next case study with Casey. Casey is an HIV case manager at a community health center. A patient tells Casey, "I'm really upset today, "because I just found out that my best friend, Amelia Smith, "tested positive for HIV." Amelia Smith is not a patient at this community health center and Casey has never had any contact with her. Is Casey obligated under Article 27-F to maintain the confidentiality of Amelia Smith's HIV status? Yes, she is. Amelia Smith is a protected individual because she's been diagnosed with HIV infection. Casey is obligated under Article 27-F to maintain the confidentiality of this information, because she got it while she was providing a health or social service. This is true, even though Amelia is not her patient and Casey has never even spoken to her. We're now finished reviewing the general rule that prohibits health and social service providers from disclosing HIV-related information, but there are many exceptions to this rule, and the purpose of these exceptions is to enable providers to do their jobs and help [16:06] their patients or clients while still protecting confidentiality to the fullest extent possible. The exceptions are all outlined in the flow chart I mentioned in slide six. Here's the flow chart. As you can see, the general rule is written in the top box, and then each box contains one or more exceptions. This is a handy reference tool to use when you're trying to figure out whether you can make a particular disclosure without violating Article 27-F. There isn't time during today's webinar to go over all of the exceptions, so I'm going focus on those that you'll most often need to rely on. They are written release, internal communications, disclosures to health care providers, HIV/AIDS case reporting and linkage to care, and partner notification. These exceptions are generally much more limited than those under HIPAA, which has many, many exceptions. So because Article 27-F is more stringent, remember, that means it has more privacy protections, you comply with these more stringent protective requirements. The first exception I'll cover is the written release form. You must use a release form that's either approved by the Department of Health or that contains the information consistent with the Department of Health model forms. Most of you are probably familiar with the standard form already. Also check out the form that authorizes disclosure of HIV, mental health, and substance abuse information. Both forms are available on our website, as explained in slide six. You can make virtually any disclosure of HIV-related information if the protected person authorizes it on a release form. The law spells out the required components of an HIV release form, which I'll review shortly. The release also must be voluntary and in writing. It is never okay to rely on oral authorization to disclose HIV-related information. Let's go over the specific items on the form. First, the name of the person whose HIV-related information is being released, then the information to be released, and the reason for the disclosures. These descriptions should be as specific as possible. The form also must list all of the recipients of the information. The law does not require that you fill in particular names of every individual at the agency who's going to get the information. So for example, if you need to disclose a client's HIV information to a government agency that's processing your client's benefit application, you could write something like, "my caseworker and other agency and staff involved "in my benefits claim" at X agency. Each agency should have a policy about how to complete these forms, including how general to be when describing the recipients. You can use a multi-party release

and list many agencies who will receive and release HIV-related information. When using the Department of Health multi-party release, note that in order to authorize all the parties on the release to be able to share the information, the first page must be signed in addition to the second and third pages. If the release is only authorizing disclosure to the entities on the list but not among them, then only the second and third pages are signed. Releases are revocable at any time, and revocation can be oral or in writing. So if John signs a release today and then changes his mind tomorrow, all he has to do is tell you that he changed his mind, he doesn't want you to disclose his HIV information to whoever it was he wrote on the release form. He does not need to put this revocation in writing, though it's certainly good practice to document it so no one else relies on the now outdated release. You also need to fill in the expiration date or event. And while the law does not impose an outside time limit, you shouldn't list an expiration date that's more than what you need to accomplish the specific purpose of the release. So for example, if you only need to disclose HIV information for one week, you shouldn't have the release expire in a year. The Department of Health recommends that releases last no longer than two years. You could write that the release will expire "when my case is resolved or two years, whichever is first." the release also needs to be signed. While this might seem obvious, you should never ask anyone to sign a blank or partially blank release. Believe me, I've seen this happen a lot of times. The form must be filled out before the individual signs it. Now, who should sign the form? To sign a release form, you have to have what's called capacity to consent. There's no automatic age cutoff for the capacity to consent, so regardless of age, you have capacity to consent if you can understand and appreciate the nature and consequences of the proposed disclosure and you can make an informed decision. A child who is five years old obviously won't have capacity to consent, but by age 14 or 15, she likely will have capacity. This requires a case-by-case evaluation. So who would sign a release if the minor does not have capacity? It gets signed by whoever has the legal authority to authorize health care for the minor. That could be the parent, whether it's biological or adoptive, a guardian, or for children in foster care, the authorized agency, such as the local Department of Social Services. But foster care agencies don't always have health care decision making authority. They only have it if the court took the authority from the parents and awarded it to the authorized agency. When you disclose HIV-related information pursuant to a release form, you must give the recipient a notice prohibiting re-disclosure. There's a notice in your sample forms. As you can see, it tells the recipient that they're now bound by Article 27-F and may not re-disclose HIV-related information unless one of the exceptions in the law applies. Even when the law permits you to disclose HIV-related information without a release, you usually need to provide this same notice prohibiting re-disclosure, but you do not need to provide the notice if the disclosure is to the protected individual, to health care providers, which I'll talk about more later, to third party payers who are reimbursing for health care, for partner notification, which I'll also discuss later, or if the disclosure is by a doctor to the parent or guardian of a minor. Time for a case study. This time about Sam, who works at a case management program. Sam is helping his client get HIV housing through a City agency. Sam calls the client and asks if it's okay to disclose her HIV status to the City agency today. He says, "Ah, you can sign a release form "when you come in next week, don't bother coming in today." Is Sam complying with Article 27-F? I talked about this before, so hopefully you remember that the answer's no. Oral authorization to release HIV information is never sufficient under Article 27-F. Could Sam have faxed or emailed his client a form to sign and send it back by fax or email? Legally, yes, fax and scanned release forms are acceptable. Providers should set their own policies about faxing and emailing HIV and other confidential information. If they do permit it, they should make sure

to require precaution so that people don't fax and email confidential information to the wrong person. There's a lot more information about that in Legal Action Center's Model Confidentiality Policies and Procedures, and we also cover that in our training on that topic, which I mentioned earlier. The next exception I'm going talk about is for internal communications. This exception is basically a need-to-know rule. It permits agency staff to share HIV-related information with other staff who are authorized to access the information in the agency's written need-to-know protocol and who have a reasonable need to know or share information in order to carry out their authorized duties. Let's see how this works in a case study with Jane, who works as a nurse in a labor and delivery unit in a hospital that use electronic health care records. So Jane's brother-in-law is a cardiology patient in the same hospital where Jane works, but Jane is not treating her brother-in-law and she's not involved in his care in any way, shape, or form. She works in an entirely different part of the hospital. But Jane's curious to know why her brother-in-law is in the hospital, so she decides she's going to search the hospital's electronic health records, and she does this, and she learns that her brother-in-law is HIV-positive. Jane's concerned that her sister might not know this, so Jane decides she's going to call her sister. She tells her, "You won't believe what I found out, your husband is HIV-positive." Naturally, Jane does not have a release form from her brother-in-law to make this disclosure. In fact, he has no idea that Jane has searched the hospital's records and discovered his HIV status. Did Jane violate Article 27-F? Yes, she did, in more than one way. First, there's no way that Jane would've had authority under the hospital's need-to-know protocol to access her brother-in-law's records for any purpose, much less for the purpose of learning his status so she could notify her sister. She likely had permission to access the hospital's electronic medical records to care for her own patients, but there was no conceivable job-related reason for Jane to see her brother-in-law's records. Remember, she works in labor and delivery, and he was in the cardiology unit. The rules about access to electronic medical records are very similar to those governing paper records. They should only be accessible to the people who need the HIV information for the purposes that are listed in the hospital's need-to-know protocol. The hospital also should've had security safeguards to prevent Jane from accessing this information in the first place. Now, would the answer be different if Jane worked in the cardiology unit and legitimately needed to know her brother-in-law's HIV status in order to provide him with appropriate care? Well, only partially. In that case, she would've legitimately learned his HIV status, but she still would've violated Article 27-F when she disclosed his status to his wife, her sister, without a release. So how could Jane have legally notified her sister that her husband was HIV-positive? Well, I'm not going tell you just yet, because I'll be discussing that in a few minutes when we get to partner notification. The third exception I'll review is for disclosures to health care providers. We'll first look at a case study involving Jan, who has diagnosed with HIV three years ago and has been seeing the same primary care doctor for the three years since her diagnosis. Due to some recent health developments, Jan's primary care doctor now wants to refer her to a specialist. Does the doctor need Jan to sign an HIV release form in order to contact a specialist to discuss her care or send over her medical records? What do you think? Release form, yes or no? No, the doctor does not need an HIV release form here. Article 27-F permits the disclosure of HIV-related information without a release form to an outside health care provider or health facility when it's necessary for that health care provider or facility to know the HIV information in order to provide appropriate care or treatment to either the protected individual, his or her child, or his or her contact. And as mentioned earlier, contact is a spouse, or sex or needle-sharing partner. In our case study, it is necessary for the specialist to know Jan's HIV status in order to provide her with appropriate care. But even though the law doesn't require a

release, many agencies consider it good practice to ask their patients for an HIV release form for these disclosures, because it keeps patients informed about who's learning their HIV status and helps build trust. But it's up to the individual agency to set its own policies about whether to seek a release in this situation. You should find out what your agency's policies are. Or if you're in charge of setting your agency's policies, you should set them accordingly. The bottom line is that the disclosure is legally permitted, even without a release. So when Jan's doctor does disclose her HIV status to the specialist, the doctor must document the disclosure, but does not need to send that notice prohibiting re-disclosure that I talked about a while ago. Remember, when we discussed these notices earlier, I said that the notice was generally required when there's a disclosure of HIV information, but that there are some exceptions. Well, this is one of the exceptions when you do not need to provide the notice. What if Jan's primary care doctor had just made the initial HIV diagnosis? Under Article 27-F, the person who ordered the HIV test is required to arrange with a health care provider for an appointment for follow-up medical care with the consent of the HIV test subject. Does Jan's doctor need a written release form to arrange this follow-up care? No, for the same reasons just discussed. But because the law does require the consent of the HIV test subject, the doctor does need Jan's oral consent. What if a community-based organization and not a health care provider needs to disclose HIV-related information to a client's health care provider so the client can receive appropriate care and treatment? A written release is not legally required in this situation for the same reasons I just discussed, but the Department of Health recommends using a release unless there's an emergency. Let's say that one day Jan is at her case management agency's office and she falls and hits her head. She loses consciousness and starts bleeding. The agency calls Emergency Medical Services, and the EMS worker asks about Jan's medications. May the case management agency tell them that she's taking well-known HIV medications? May the case management agency disclose her HIV status to the EMS workers? Just as in examples I've been discussing. Article 27-F does not require a written release here, because a disclosure of her HIV status is necessary so the EMS can provide her with appropriate care and convey the information to the hospital. Because the situation is an emergency, the Department of Health does not require even trying to get a release form. Of course, if Jane were conscious, the agency could permit her to make her own disclosure. Sometimes an emergency response worker might want to know an individual's HIV status so they can take extra precautions to avoid transmission, but infection control is not a permissible reason for the case management agency to disclose anyone's HIV status to EMS. Remember, these disclosures are only permitted for the care or treatment of the patient, not for quote-unquote infection control. It's assumed that all health care providers are using universal precautions in every instance. The fourth exception is the one that allows HIV and AIDS case reports to the Department of Health. So the public health officials can track and address the HIV epidemic, doctors and others who diagnose HIV or AIDS are required to report their initial diagnosis to the New York State Department of Health. Each report contains the name of the person diagnosed and any sexual or needle-sharing contacts that the reporter either knows about or finds out about through post-test counseling. Until 2014, this information was required to stay confidential within the public health system and was only allowed to be used for monitoring the epidemic and conducting contact notification, which I'll talk about more in a minute. So for example, the state health department would share the information with local health departments, but in 2014 the law was amended to allow public health officials to share the information with each other and with the patient's health care providers in order to facilitate care. This means, for example, that if Jack Smith was recently diagnosed with HIV, the health department can call

his doctor to see if he is in treatment. The fifth and last exception we'll cover in this webinar is for partner notification. What should you do if a client or patient confides that he or she is having unprotected sex and has no intention of disclosing HIV status to his or her partner? Let's look first at Myra, a case manager at a health or social service agency, and her client, whose name is John. John confides in Myra that he's been having unprotected sex with several people, including his wife, and he doesn't want any of them to know that he's HIV positive. Myra has tried many times over several weeks to persuade John to practice safer sex and to disclose his status, but she has not been successful. Myra knows who his wife is, but she does not know the identities of the other partners. She clearly can't notify these other partners, seeing as she doesn't know who they are, but is she allowed to notify John's wife that she's at risk of contracting HIV from John? Must she notify her? The answer is no, she may not, but this doesn't mean there's nothing she can do. Case managers like Myra should educate clients that there are special confidential programs to help with partner services, including making anonymous and online notifications. With a signed release from John, Myra can refer him to the State Department of Health's Partner Services program at 800-541-AIDS. If Myra and John are in New York City, she can refer him to the city's Contact Notification Assistance Program, also known as CNAP, at 212-693-1419 or by calling 311. Another option for Myra is to ask John for his oral consent to call her Partner Services together and have John self-disclose his HIV status, or John could remain anonymous on the call. If she does this, she should document John's oral consent to Partner Services. Myra would only need a written release if she were going to disclose John's HIV status. Article 27-F only permits special Department of Health staff and doctors to notify at-risk partners of their potential exposure to HIV. No one else, no one else, I repeat, may do partner notification legally without an HIV release form or a special court order issued under Article 27-F. When physicians conduct notification, they have to follow a very specific protocol. Notification can only occur if the physician determines that there's a significant risk of infection, educates the patient about the need to notify, does a domestic violence screen to see if the source patient could face violence if partner notification is conducted, and finally, informs the patient that the physician intends to notify the at-risk partner or can ask the Department of Health to do so. The patient can then choose to have the Department of Health conduct the notification rather than the physician. But no matter who does the notification, the source person's name or identity may not be revealed. Now, you can imagine that in some instances, a partner might guess the source person's identity, for example if that was the only person that they'd had sexual relations with. But the physician conducting the notification may not reveal it. Having the Department of Health do the notification instead of the physician may help preserve the patient's anonymity. So getting back to Myra, our case manager. What other options does she have to protect John's wife from HIV transmission? In addition to getting a release from John for referral to the Department of Health's Partner Services program, she could get a release to speak to John's doctor. The doctor could then notify the Department of Health Partner Services program or consider conducting the notification him or herself by following the protocol explained in the last slide. Finally, if the agency Myra works for has a staff physician, she can ask that physician to pursue the notification or contact the Department of Health. And people often ask, "Do I have a duty "to tell my patient's partners "that my patient is HIV-positive?" Well, as I just explained, there's no legal duty to notify in this context. So to recap what I've covered in the last few slides, partner notification may be, not must be, may be conducted by physicians and the Department of Health, but physicians do not have a legal duty to do partner notification. They merely have permission to notify at-risk partners, and can also refer to the Department of Health. In addition, New York State's

HIV clinical guidelines suggest referring patients to HIV/STD partner services. Non-physicians, such as Myra, may not conduct partner notification, and they have no legal duty to ensure that at-risk partners are notified. But case management guidelines and good practice include referring clients to HIV or STD partner services. There are a number of other exceptions in Article 27-F that also permit disclosure of HIV-related information. We don't have time to discuss them all, but here's a list. They include, first, allowing physicians to disclose a minor's HIV status to their parent or guardian in very limited circumstances, second, disclosures within the foster care system and child abuse and neglect reporting, third, disclosures after an occupational exposure, such as a needle stick, fourth, disclosures to insurance companies, fifth, disclosures about people accused and convicted of certain sex offenses, sixth, a court order than can be issued only in a narrow set of circumstances that is spelled out in Article 27-F, seventh, program evaluation, eighth, newborn testing, and ninth, disclosures to administrators and executors of the estate of an HIV-positive person. These other exceptions are explained in far more detail in the Legal Action Center's manual, HIV/AIDS Testing, Confidentiality, and Discrimination: What You Need to Know About New York Law, which you can download for free at our website, and which we referenced in a slide earlier on. So now that you've gotten an overview of HIV Confidentiality Law and HIPAA, you need to know what happens when these laws are violated. How do individuals enforce their rights? There are a number of ways people can enforce their rights under Article 27-F and HIPAA, and they include filing complaints with government agencies, as well as bringing lawsuits. So for violations of Article 27-F, individuals may file complaints with the New York State Department of Health AIDS Institute's Special Investigation Unit. The contact information is on your slide. For HIPAA violations, people may file complaints with the U.S. Office of Civil Rights. This is part of the U.S. Department of Health and Human Services. Their website is on your screen. These agencies have authority under these laws to impose fines and to require policy changes and training. Note the deadlines, especially the deadline for a HIPAA complaint, as it must be filed in 180 days. For violations of Article 27-F, people may also bring lawsuits in court. They can ask the court to award what are called compensatory damages to compensate them for whatever harm they suffered because of the confidentiality breach. This could be out-of-pocket losses as well as emotional harm. For example, if a hospital breached a patient's confidentiality by, for example, disclosing the patient's HIV status to his or her employer, the patient could ask for lost wages if the patient lost his job as a result. And the patient could ask for compensation for emotional harm, for example, if he was shunned by co-workers. The patient could also ask the court to order the breacher to implement better policies and to train their staff. HIPAA is quite another story, however. People may not enforce their rights to HIPAA in court. Only the federal government has the authority to enforce HIPAA. Individuals may only file complaints with the Office of Civil Rights. To get help with any of these remedies, individuals who believe their HIV confidentiality rights might have been violated may contact the Legal Action Center at the number on your screen or contact other HIV legal services providers. [42:10]

If you'd like to learn more about how these HIV confidentiality issues play out in the workplace, at school, or in other settings, or you'd like to be able to give your clients or patients this type of information, please check out these other Legal Action Center resources which are available in English and Spanish on the Center's website. The first is Employment and HIV: Rights You Have in New York. The second is To Disclose or Not to Disclose: Seven Things to Know About Medical Forms and HIV. And that document is really helpful both for physicians filling out medical forms and for people whose HIV status

may or may not be disclosed on those forms. And finally, HIV Confidentiality: How Confidential Is Your HIV Information? Also feel free to follow the Legal Action Center on Facebook or subscribe to receive our HIV-related e-blast so you can learn about upcoming trainings and new publications on these topics. [43:08]

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