

**ARTICLE 27-F
HIV AND AIDS RELATED INFORMATION**

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§2780. Definitions. As used in this article, the following terms shall have the following meanings:

1. "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.
2. "HIV infection" means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.
3. "HIV related illness" means any illness that may result from or may be associated with HIV infection.
4. "HIV related test" means any laboratory test or series of tests for any virus, antibody, antigen or etiologic agent whatsoever thought to cause or to indicate the presence of AIDS.
5. "Capacity to consent" means an individual 's ability, determined without regard to the individual 's 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, as the case may be, and to make an informed decision concerning the service, treatment, procedure or disclosure.
6. "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.
7. "Confidential HIV related information" means any information, in the possession of a person who provides one or more health or social services or who obtains the information pursuant to a release of confidential HIV related information, concerning whether an individual has been the subject of an HIV related test, or 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.
8. "Health or social service" means any public or private care, treatment, clinical laboratory test, counseling or educational service for adults or children, and acute, chronic, custodial, residential, outpatient, home or other health care provided pursuant to this chapter or the social services law; public assistance or care as defined in article one of the social services law; employment-related services, housing services, foster care, shelter, protective services, day care, or preventive services provided pursuant to the social services law; services for the mentally disabled as defined in article one of the

mental hygiene law; probation services, provided pursuant to articles twelve and twelve-A of the executive law; parole services, provided pursuant to article twelve-B of the executive law; correctional services, provided pursuant to the correction law; detention and rehabilitative services provided pursuant to article nineteen-G of the executive law; and the activities of the health care worker HIV/HBV advisory panel pursuant to article twenty-seven-DD of this chapter.

9. "Release of confidential HIV related information" means a written authorization for disclosure of confidential HIV related information which is signed by the protected individual, or if the protected individual lacks capacity to consent, a person authorized pursuant to law to consent to health care for the individual. Such release shall be dated and shall specify to whom disclosure is authorized, the purpose for such disclosure and the time period during which the release is to be effective. A general authorization for the release of medical or other information shall not be construed as a release of confidential HIV related information, unless such authorization specifically indicates its dual purpose as a general authorization and an authorization for the release of confidential HIV related information and complies with the requirements of this subdivision.

10. "Contact" means an identified spouse or sex partner of the protected individual, a person identified as having shared hypodermic needles or syringes with the protected individual or a person who the protected individual may have exposed to HIV under circumstances that present a risk of transmission of HIV, as determined by the commissioner.

11. "Person" includes any natural person, partnership, association, joint venture, trust, public or private corporation, or state or local government agency.

12. "Health facility" means a hospital as defined in section two thousand eight hundred one of this chapter, blood bank, blood center, sperm bank, organ or tissue bank, clinical laboratory, or facility providing care or treatment to persons with a mental disability as defined in article one of the mental hygiene law.

13. "Health care provider" means any physician, nurse, provider of services for the mentally disabled as defined in article one of the mental hygiene law, or other person involved in providing medical, nursing, counseling, or other health care or mental health service, including those associated with, or under contract to, a health maintenance organization or medical services plan.

14. "Child" means any protected individual actually or apparently under eighteen years of age.

15. "Authorized agency" means any agency defined by section three hundred seventy-one of the social services law and, for the purposes of this article, shall include such corporations incorporated or organized under the laws of the state as may be specifically authorized by their certificates of incorporation to receive children for the purposes of adoption or foster care.

16. "Insurance institution" means any corporation, association, partnership, reciprocal exchange, interinsurer, fraternal benefits society, agent, broker or other entity including, but not limited to, any health maintenance organization, medical service plan, or hospital plan which: (a) is engaged in the business of insurance; (b) provides health services coverage plans; or (c) provides benefits under, administers, or provides services for, an employee welfare benefit plan as defined in 29 U.S.C. 1002(1).

17. "Insurance support organization" means any person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural

persons for the primary purpose of providing the information to an insurance institution for insurance transactions, including: (a) the furnishing of consumer reports or investigative consumer reports to an insurance institution for use in connection with an insurance transaction; or (b) the collection of personal information from insurance institutions or other insurance support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material non-disclosure in connection with insurance underwriting or insurance claim activity. The following persons shall not be considered "insurance-support organizations" for the purposes of this article: government institutions, insurance institutions, health facilities and health care providers.

§ 2781. HIV related testing. 1. Except as provided in section three thousand one hundred twenty-one of the civil practice law and rules, or unless otherwise specifically authorized or required by a state or federal law, no person shall order the performance of an HIV related test without first receiving the written, informed consent of the subject of the test who has capacity to consent or, when the subject lacks capacity to consent, of a person authorized pursuant to law to consent to health care for such individual. A physician or other person authorized pursuant to law to order the performance of an HIV related test shall certify, in the order for the performance of an HIV related test, that informed consent required by this section has been received prior to ordering such test by a laboratory or other facility.

2. Informed consent to an HIV related test shall consist of a statement signed by the subject of the test who has capacity to consent or, when the subject lacks capacity to consent, by a person authorized pursuant to law to consent to health care for the subject which includes at least the following:

(a) an explanation of the test, including its purpose, the meaning of its results, and the benefits of early diagnosis and medical intervention; and

(b) an explanation of the procedures to be followed, including that the test is voluntary, that consent may be withdrawn at any time, and a statement advising the subject that anonymous testing is available; and

(c) an explanation of the confidentiality protections afforded confidential HIV related information under this article, including the circumstances under which and classes of persons to whom disclosure of such information may be required, authorized or permitted under this article or in accordance with other provisions of law or regulation.

3. Prior to the execution of a written informed consent, a person ordering the performance of an HIV related test shall provide to the subject of an HIV related test or, if the subject lacks capacity to consent, to a person authorized pursuant to law to consent to health care for the subject, an explanation of the nature of AIDS and HIV related illness, information about discrimination problems that disclosure of the test result could cause and legal protections against such discrimination, and information about behavior known to pose risks for transmission and contraction of HIV infection.

4. A person authorized pursuant to law to order the performance of an HIV related test shall provide to the person seeking such test an opportunity to remain anonymous and to provide written, informed consent through use of a coded system with no linking of individual identity to the test request or results. A health care provider who is not authorized by the commissioner to provide HIV related tests on an anonymous basis shall refer a person who requests an anonymous test to a test site which does provide

anonymous testing. The provisions of this subdivision shall not apply to a health care provider ordering the performance of an HIV related test on an individual proposed for insurance coverage.

5. At the time of communicating the test result to the subject of the test, a person ordering the performance of an HIV related test shall provide the subject of the test or, if the subject lacks capacity to consent, the person authorized pursuant to law to consent to health care for the subject with counseling or referrals for counseling: (a) for coping with the emotional consequences of learning the result; (b) regarding the discrimination problems that disclosure of the result could cause; (c) for behavior change to prevent transmission or contraction of HIV infection; (d) to inform such person of available medical treatments; and (e) regarding the test subject 's need to notify his or her contacts.

6. The provisions of this section shall not apply to the performance of an HIV related test:

(a) by a health care provider or health facility in relation to the procuring, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, or other body fluids, for use in medical research or therapy, or for transplantation to individuals provided, however, that where the test results are communicated to the subject, post-test counseling, as described in subdivision five of this section, shall nonetheless be required; or

(b) for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher; or

(c) on a deceased person, when such test is conducted to determine the cause of death or for epidemiological purposes.

(d) conducted pursuant to section twenty-five hundred-f of this chapter.

§ 2782. Confidentiality and disclosure. 1. No person who obtains confidential HIV related information in the course of providing any health or social service or pursuant to a release of confidential HIV related information may disclose or be compelled to disclose such information, except to the following:

(a) the protected individual or, when the protected individual lacks capacity to consent, a person authorized pursuant to law to consent to health care for the individual;

(b) any person to whom disclosure is authorized pursuant to a release of confidential HIV related information;

(c) an agent or employee of a health facility or health care provider if (1) the agent or employee is permitted to access medical records, (2) the health facility or health care provider itself is authorized to obtain the HIV related information, and (3) the agent or employee provides health care to the protected individual, or maintains or processes medical records for billing or reimbursement;

(d) a health care provider or health facility when knowledge of the HIV related information is necessary to provide appropriate care or treatment to the protected individual, a child of the individual, a contact of the protected individual or a person authorized to consent to health care for such a contact;

(e) a health facility or health care provider, in relation to the procurement, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, or other body fluids, for use in medical education, research, therapy, or for transplantation to individuals;

(f) health facility staff committees or accreditation or oversight review organizations authorized to access medical records; provided that such committees or organizations may only disclose confidential HIV related information: (1) back to the facility or provider of a health or social service; (2) to carry out the monitoring, evaluation, or service review for which it was obtained; or (3) to a federal, state or local government agency for the purposes of and subject to the conditions provided in subdivision six of this section;

(g) a federal, state, county or local health officer when such disclosure is mandated by federal or state law;

(h) an authorized agency in connection with foster care or adoption of a child. Such agency shall be authorized to redisclose such information only pursuant to this article or in accordance with the provisions of subdivision eight of section three hundred seventy-two and section three hundred seventy-three-a of the social services law;

(i) third party reimbursers or their agents to the extent necessary to reimburse health care providers for health services; provided that, where necessary, an otherwise appropriate authorization for such disclosure has been secured by the provider;

(j) an insurance institution, for other than the purpose set forth in paragraph (i) of this subdivision, provided the insurance institution secures a dated and written authorization that indicates that health care providers, health facilities, insurance institutions, and other persons are authorized to disclose information about the protected individual, the nature of the information to be disclosed, the purposes for which the information is to be disclosed and which is signed by: (1) the protected individual; (2) if the protected individual lacks the capacity to consent, such other person authorized pursuant to law to consent for such individual; or (3) if the protected individual is deceased, the beneficiary or claimant for benefits under an insurance policy, a health services plan, or an employee welfare benefit plan as defined in 29 U.S.C. 1002(1), covering such protected individual;

(k) any person to whom disclosure is ordered by a court of competent jurisdiction pursuant to section twenty-seven hundred eighty-five of this article;

(l) an employee or agent of the division of parole, in accordance with paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, to the extent the employee or agent is authorized to access records containing such information in order to carry out the division 's functions, powers and duties with respect to the protected individual, pursuant to section two hundred fifty-nine-a of the executive law;

(m) an employee or agent of the division of probation and correctional alternatives or any local probation department, in accordance with paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, to the extent the employee or agent is authorized to access records containing such information in order to carry out the division 's or department 's functions, powers and duties with respect to the protected individual, pursuant to articles twelve and twelve-A of the executive law;

(n) a medical director of a local correctional facility as defined in section forty of the correction law, in accordance with paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, to the extent the medical director is authorized to access records containing such information in order to carry out his or her functions, powers and duties with respect to the protected individual; or

(o) an employee or agent of the commission of correction, in accordance with paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, to the extent the employee or agent is authorized to access records containing

such information in order to carry out the commission 's functions, powers and duties with respect to the protected individual, pursuant to article three of the correction law.

(p) a law guardian, appointed to represent a minor pursuant to the social services law or the family court act, with respect to confidential HIV related information relating to the minor and for the purpose of representing the minor. If the minor has the capacity to consent, the law guardian may not redisclose confidential HIV related information without the minor 's permission. If the minor lacks capacity to consent, the law guardian may redisclose confidential HIV related information for the sole purpose of representing the minor. This paragraph shall not limit a law guardian 's ability to seek relief under section twenty-seven hundred eighty-five of this chapter.

2. A state, county or local health officer may disclose confidential HIV related information when:

- (a) disclosure is specifically authorized or required by federal or state law; or
- (b) disclosure is made pursuant to a release of confidential HIV related information; or
- (c) disclosure is requested by a physician pursuant to subdivision four of this section; or
- (d) disclosure is authorized by court order pursuant to the provisions of section twenty-seven hundred eighty-five of this article.

3. No person to whom confidential HIV related information has been disclosed pursuant to this article shall disclose the information to another person except as authorized by this article, provided, however, that the provisions of this subdivision shall not apply:

- (a) to the protected individual; or
- (b) to a natural person who is authorized pursuant to law to consent to health care for the protected individual; or
- (c) to a protected individual 's foster parent as defined in section three hundred seventy-one of the social services law and subject to regulations promulgated pursuant to paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, for the purpose of providing care, treatment or supervision of the protected individual; or
- (d) a prospective adoptive parent as specified in section three hundred seventy-three-a of the social services law and subject to regulations promulgated pursuant to paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article with whom a child who is the protected individual has been placed for adoption; or
- (e) to a relative or other person legally responsible to whom a child who is the protected individual is to be placed or discharged pursuant to section ten hundred seventeen or ten hundred fifty-five of the family court act and subject to regulations promulgated pursuant to paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, for the purpose of providing care, treatment or supervision of the protected individual.

4. (a) A physician may disclose confidential HIV related information under the following conditions:

- (1) disclosure is made to a contact, to a public health officer for the purpose of making the disclosure to said contact and pursuant to section twenty-one hundred thirty of this chapter; or
- (2) the physician believes disclosure is medically appropriate and there is a significant risk of infection to the contact; and
- (3) the physician has counseled the protected individual regarding the need to notify the contact; and

(4) the physician has informed the protected individual of his or her intent to make such disclosure to a contact, the physician 's responsibility to report the infected individual 's case pursuant to section twenty-one hundred thirty of this chapter and has given the protected individual the opportunity to express a preference as to whether disclosure should be made by the physician directly or to a public health officer for the purpose of said disclosure. If the protected individual expresses a preference for disclosure by a public health officer, the physician shall honor such preference.

(5) If a physician chooses to make a notification pursuant to this section, he or she shall report to the municipal health commissioner or district health officer on his or her efforts to notify the contacts of the protected individual. Such report shall be in a manner and on forms prescribed by the commissioner and shall include the identity of the protected individual and any contacts as well as information as to whether the contacts were successfully notified.

(6) Within a reasonable time of receiving a report that a physician or his or her designated agent did not notify or verify notification of contacts provided by the protected individual, the health commissioner or district health officer of the municipality from which the report originates shall take reasonable measures to notify such contacts and otherwise comply with the provisions of this chapter.

(b) When making such disclosures to the contact, the physician or public health officer shall provide or make referrals for the provision of the appropriate medical advice and counseling for coping with the emotional consequences of learning the information and for changing behavior to prevent transmission or contraction of HIV infection. The physician or public health officer shall not disclose the identity of the protected individual or the identity of any other contact. A physician or public health officer making a notification pursuant to this subdivision shall make such disclosure in person, except where circumstances reasonably prevent doing so.

(c) A physician or public health officer shall have no obligation to identify or locate any contact except as provided pursuant to title three of article twenty-one of this chapter.

(d) A physician may, upon the consent of a parent or guardian, disclose confidential HIV related information to a state, county, or local health officer for the purpose of reviewing the medical history of a child to determine the fitness of the child to attend school.

(e) A physician may disclose confidential HIV related information pertaining to a protected individual to a person (known to the physician) authorized pursuant to law to consent to health care for a protected individual when the physician reasonably believes that: (1) disclosure is medically necessary in order to provide timely care and treatment for the protected individual; and (2) after appropriate counseling as to the need for such disclosure, the protected individual will not inform a person authorized by law to consent to health care; provided, however, that the physician shall not make such disclosure if, in the judgment of the physician: (A) the disclosure would not be in the best interest of the protected individual; or (B) the protected individual is authorized pursuant to law to consent to such care and treatment. Any decision or action by a physician under this paragraph, and the basis therefor, shall be recorded in the protected individual 's medical record.

5. (a) Whenever disclosure of confidential HIV related information is made pursuant to this article, except for disclosures made pursuant to paragraph (a) of subdivision one of this section or paragraph (a) or (e) of subdivision four of this section, such disclosure shall be accompanied or followed by a statement in writing which includes the following

or substantially similar language: "This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for further disclosure." An oral disclosure shall be accompanied or followed by such a notice within ten days.

(b) Except for disclosures made pursuant to paragraph (c) of subdivision one of this section, or to persons reviewing information or records in the ordinary course of ensuring that a health facility is in compliance with applicable quality of care standards or any other authorized program evaluation, program monitoring or service review, or to governmental agents requiring information necessary for payments to be made on behalf of patients or clients pursuant to contract or in accordance to law, a notation of all such disclosures shall be placed in the medical record of a protected individual, who shall be informed of such disclosures upon request; provided, however, that for disclosures made to insurance institutions such a notation need only be entered at the time the disclosure is first made.

6. (a) The provisions of this subdivision shall apply where a provider of a health or social service possesses confidential HIV related information relating to individuals who are recipients of the service, and a federal, state or local government agency supervises or monitors the provider or administers the program under which the service is provided.

(b) Confidential HIV related information relating to a recipient of such service may be disclosed in accordance with regulations promulgated pursuant to paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article to an authorized employee or agent of such provider or government agency, when reasonably necessary for such supervision, monitoring, administration, or provision of such service. The term "authorized employee or agent", as used in this subdivision shall only include any employee or agent who would, in the ordinary course of business of the provider or government agency, have access to records relating to the care of, treatment of, or provision of a health or social service to the protected individual.

7. Nothing in this section shall limit a person 's or agency 's responsibility or authority to report, investigate, or redisclose, child protective and adult protective services information in accordance with title six of article six and titles one and two of article nine-B of the social services law, or to provide or monitor the provision of child and adult protective or preventive services.

8. Confidential HIV related information shall be recorded in the medical record of the protected individual. The provisions of this section shall not prohibit the listing of acquired immune deficiency syndrome, HIV related illness or HIV infection in a certificate of death, autopsy report or related documents prepared pursuant to article forty-one of this chapter or other applicable laws, ordinances, rules or regulations relating to the documentation of cause of death, nor shall this section be construed to modify any laws, ordinances, rules or regulations relative to access to death certificates, autopsy reports or such other related documents. Under no circumstances shall confidential HIV related information be disclosable pursuant to article six of the public officers law. Notwithstanding the foregoing, confidential HIV information obtained pursuant to section 390.15 of the criminal procedure law or section 347.1 of the family court act by either court order or consent of the protected individual shall not be

recorded in the medical record of the protected individual unless he or she consents to the recording of such information in a written statement containing the relevant information specified in subdivision two of section two thousand seven hundred eighty-one of this article.

9. Confidential HIV related information shall be disclosed upon the request of the health care worker HIV/HBV advisory panel, established pursuant to article twenty-seven-DD of this chapter, to the panel or its designee only when reasonably necessary for the evaluation of a worker who has voluntarily sought the panel 's review.

§ 2783. Penalties; immunities. 1. Any person who shall:

(a) perform, or permit or procure the performance of, an HIV related test in violation of section twenty-seven hundred eighty-one of this article; or

(b) disclose, or compel another person to disclose, or procure the disclosure of, confidential HIV related information in violation of section twenty-seven hundred eighty-two of this article; shall be subject to a civil penalty not to exceed five thousand dollars for each occurrence. Such penalty may be recovered in the same manner as the penalty provided in section twelve of this chapter.

2. Any person who willfully commits an act enumerated in subdivision one of this section shall be guilty of a misdemeanor and subject to the penalties provided in section twelve-b of this chapter.

3. There shall be no criminal sanction or civil liability on the part of, and no cause of action for damages shall arise against any physician, his or her employer, or a physician 's designated agent, or health facility or health care provider with which the physician is associated, or public health officer, on account of:

(a) the failure to disclose confidential HIV related information to a contact or person authorized pursuant to law to consent to health care for a protected individual; or

(b) the disclosure of confidential HIV related information to a contact or person authorized pursuant to law to consent to health care for a protected individual, when carried out in compliance with this article; or

(c) the disclosure of confidential HIV related information to any person, agency, or officer authorized to receive such information, when carried out in good faith and without malice, and in compliance with the provisions of this article; or

(d) the municipal health commissioner or district health officer 's failure to notify contacts pursuant to this chapter.

4. Any cause of action to recover damages based on a failure to provide information, explanations, or counseling prior to the execution of a written informed consent, or based on a lack of informed consent in the ordering or performance of an HIV related test in violation of this article shall be governed by the provisions of section two thousand eight hundred five-d of this chapter.

§ 2784. Applicability to insurance institutions and insurance support

organizations. Except for disclosure to third party reimbursers and insurance institutions pursuant to paragraphs (i) and (j) of subdivision one of section twenty-seven hundred eighty-two of this article and except for disclosures pursuant to section twenty-seven hundred eighty-five of this article, the provisions of this article shall not apply to insurance institutions and insurance support organizations, except that health care

providers associated with or under contract to a health maintenance organization or other medical services plan shall be subject to the provisions of this article.

§ 2785. Court authorization for disclosure of confidential HIV related information.

1. Notwithstanding any other provision of law, no court shall issue an order for the disclosure of confidential HIV related information, except a court of record of competent jurisdiction in accordance with the provisions of this section.

2. A court may grant an order for disclosure of confidential HIV related information upon an application showing:

(a) a compelling need for disclosure of the information for the adjudication of a criminal or civil proceeding; (b) a clear and imminent danger to an individual whose life or health may unknowingly be at significant risk as a result of contact with the individual to whom the information pertains; (c) upon application of a state, county or local health officer, a clear and imminent danger to the public health; or (d) that the applicant is lawfully entitled to the disclosure and the disclosure is consistent with the provisions of this article.

3. Upon receiving an application for an order authorizing disclosure pursuant to this section, the court shall enter an order directing that all pleadings, papers, affidavits, judgments, orders of the court, briefs and memoranda of law which are part of the application or the decision thereon, be sealed and not made available to any person, except to the extent necessary to conduct any proceedings in connection with the determination of whether to grant or deny the application, including any appeal. Such an order shall further direct that all subsequent proceedings in connection with the application shall be conducted in camera, and, where appropriate to prevent the unauthorized disclosure of confidential HIV related information, that any pleadings, papers, affidavits, judgments, orders of the court, briefs and memoranda of law which are part of the application or the decision thereon not state the name of the individual concerning whom confidential HIV related information is sought.

4. (a) The individual concerning whom confidential HIV related information is sought and any person holding records concerning confidential HIV related information from whom disclosure is sought shall be given adequate notice of such application in a manner which will not disclose to any other person the identity of the individual, and shall be afforded an opportunity to file a written response to the application, or to appear in person for the limited purpose of providing evidence on the statutory criteria for the issuance of an order pursuant to this section.

(b) The court may grant an order without such notice and opportunity to be heard, where an ex parte application by a public health officer shows that a clear and imminent danger to an individual whose life or health may unknowingly be at risk requires an immediate order.

(c) Service of a subpoena shall not be subject to this subdivision.

5. In assessing compelling need and clear and imminent danger, the court shall provide written findings of fact, including scientific or medical findings, citing specific evidence in the record which supports each finding, and shall weigh the need for disclosure against the privacy interest of the protected individual and the public interest which may be disserved by disclosure which deters future testing or treatment or which may lead to discrimination.

6. An order authorizing disclosure of confidential HIV related information shall:

- (a) limit disclosure to that information which is necessary to fulfill the purpose for which the order is granted; and
- (b) limit disclosure to those persons whose need for the information is the basis for the order, and specifically prohibit redisclosure by such persons to any other persons, whether or not they are parties to the action; and
- (c) to the extent possible consistent with this section, conform to the provisions of this article; and
- (d) include such other measures as the court deems necessary to limit any disclosures not authorized by its order.

§ 2785-a. Court order for HIV related testing in certain cases. 1. Notwithstanding any contrary provision of law or regulation, a state, county or local public health officer to whom an order or a consent for an HIV test is addressed or sent, in accordance with section 390.15 of the criminal procedure law or section 347.1 of the family court act, must cause HIV related testing to be administered to the subject named therein and, if the test is pursuant to court order, must immediately provide to the court that issued the order a written report specifying the date on which such test was completed. Such report to the court shall not, however, disclose the results of such test. Such officer must disclose the results of the testing to the victim indicated in the order or consent and must also disclose the results to the person tested, unless the person tested has been asked to but declines to authorize such disclosure to himself or herself.

2. At the time of communicating the test results to the subject or the victim, such public health officer shall directly provide the victim and person tested with (a) counseling or referrals for counseling for the purposes specified in subdivision five of section two thousand seven hundred eighty-one of this article; (b) counseling with regard to HIV disease and HIV testing in accordance with law and consistent with subdivision five of section two thousand seven hundred eighty-one of this article; and (c) appropriate health care and support services, or referrals to such available services. If at the time of communicating the test results, the person tested is in the custody of the department of correctional services, division for youth, office of mental health or a local correctional institution, the counseling and services required by this subdivision may be provided by a public health officer associated with the county or facility within which the person tested is confined.

3. Unless inconsistent with this section, the provisions of this article regarding the confidentiality and disclosure of HIV related information shall apply to proceedings conducted pursuant to section 390.15 of the criminal procedure law or section 347.1 of the family court act.

§ 2786. Rules and regulations; forms; report. 1. The commissioner shall promulgate rules and regulations concerning implementation of this article for health facilities, health care providers and other persons to whom this article is applicable. The commissioner shall also develop forms to be used for informed consent for HIV related testing and for the release of confidential HIV related information and materials for pre-test counseling as required by subdivision three of section twenty-seven hundred eighty-one of this article, and for post-test counseling as required by subdivision five of section twenty-seven hundred eighty-one of this article. Persons, health facilities and health care

providers may use forms for informed consent for HIV related testing, and for the release of confidential HIV related information other than those forms developed pursuant to this section, provided that the person, health facility or health care provider doing so receives prior authorization from the commissioner. All forms developed or authorized pursuant to this section shall be written in a clear and coherent manner using words with common, everyday meanings. The commissioner, in consultation with the AIDS institute advisory council, shall promulgate regulations to identify those circumstances which create a significant risk of contracting or transmitting HIV infection; provided, however, that such regulations shall not be determinative of any significant risk determined pursuant to paragraph (a) of subdivision four of section twenty-seven hundred eighty-two or section twenty-seven hundred eighty-five of this article.

2. (a) Each state agency authorized pursuant to this article to obtain confidential HIV related information shall, in consultation with the department of health, promulgate regulations: (1) to provide safeguards to prevent discrimination, abuse or other adverse actions directed toward protected individuals; (2) to prohibit the disclosure of such information except in accordance with this article; (3) to seek to protect individuals in contact with the protected individual when such contact creates a significant risk of contracting or transmitting HIV infection through the exchange of body fluids, and (4) to establish criteria for determining when it is reasonably necessary for a provider of a health or social service or the state agency or a local government agency to have or to use confidential HIV related information for supervision, monitoring, investigation, or administration and for determining which employees and agents may, in the ordinary course of business of the agency or provider, be authorized to access confidential HIV related information pursuant to the provisions of paragraphs (l) and (m) of subdivision one and subdivision six of section twenty-seven hundred eighty-two of this article; and provided further that such regulations shall be promulgated by the chairperson of the commission of correction where disclosure is made pursuant to paragraphs (n) and (o) of subdivision one of section twenty-seven hundred eighty-two of this article.

(b) The department of health, in consultation with agencies referred to in paragraph (a) of this subdivision, shall submit a report to the legislature by December first, nineteen hundred eighty-nine, outlining the status and content of such regulations, their effect on the regulated facilities and the protected individuals served by them, the extent to which they conform with current medical and scientific knowledge on the transmissibility of HIV infection, and any recommendations for changes in said regulations.

§ 2787. Separability. If any section, clause or provision of this article shall be deemed by any court of competent jurisdiction to be unconstitutional or ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.