Chapter Seven

Confidentiality of Health Information

All medical and mental health information about a child in foster care must be kept confidential in accordance with section 372 of the Social Services Law. They may be shared only with health practitioners, health staff, caseworkers, direct care workers, and foster parents (with some exceptions) when they need it to provide adequate care and supervision. Confidentiality applies to names, addresses, and telephone numbers of children, foster families, and relatives as well as the child's health information.

Specifically, "Information to be safeguarded includes names and address of applicants (*for services*), recipients, and their relatives, including lists thereof: information contained in applications and correspondence; reports of investigations; reports of medical examination, diagnostic tests and treatment, including reports on whether an applicant or recipient has had an HIV-related test or has been diagnosed as having AIDS, HIV infection or an HIV-related illness; resource information; financial statements; and record of agency evaluation of such information. This applies to all information secured by the agency whether or not it is contained in the written record." [1]

This chapter covers issues related to sharing health information and confidentiality of medical records and other health information.

Sections in this chapter include:

1. Sharing health information
2. Flow of confidential health information
3. Confidentiality and disclosure of HIV-related information
4. HIV testing and confidentiality
5. Agency protocols for protecting confidentiality
6. Resources

[1] 18 NYCRR 357.1.

1 Sharing Health Information

Caseworkers and health staff should share health information on children in foster care with others who need it to provide assessment, treatment, services, and care and supervision. This includes health care providers, health professionals, caregivers, and birth parents/guardians in most cases.

At the time of placement, the agency must provide the comprehensive health history of the child and his/her birth parents and the health care needs of the child to the foster parents.[2] Since foster parents play an important role in the ongoing health care and well-being of children in their care, they should be familiar with the child's medical history and records.

Most birth parents may have access to health information for their child in foster care. However, if the child is freed for adoption, do not share health information with the birth parent since parental rights have been surrendered or terminated. To the extent it is available, the agency must provide the comprehensive health history of the child and birth parents to prospective adoptive parents, and, upon request, to adoptive parents. Information identifying the birth parents must be removed when the records are provided.[3]

Exceptions to agency sharing of information include:

- Information related to reproductive health services, family planning, and STD testing and treatment; prenatal care and labor and delivery services *(see Chapter 6, Medical Consents)*.

  A foster child or youth with capacity to consent has the right to confidentiality regarding issues of family planning and reproduction, and sexually transmitted diseases.[4] This information may not be shared with caseworkers, health staff, the child's foster parent, or birth parent or guardian without the express consent of the child with capacity to consent. It is recommended that staff encourage the child with capacity to consent to share information with an adult who is responsible for his or her care.

- Information related to HIV/AIDS testing and treatment when the child has the capacity to consent *(see section 4, HIV Testing and Confidentiality)*.

- Information related to chemical dependency (substance abuse) services. Service providers will require written consent from the youth before releasing information to the agency. Once received, the information cannot be redisclosed without consent of the youth.[5]

Other professionals such as CASA[6] workers may only have access to confidential health information for a child in foster care through court order. They may not have access to HIV-related information unless specifically authorized in the court order.

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[2] 18 NYCRR 357.3(b)(2) and 441.22(j)(1).
[3] 18 NYCRR 357.3(b)(3).
[4] PHL 17.
[5] 42 CFR 2.14.
[6] Court-Appointed Special Advocates.

Regarding internal sharing of information, locally established written procedures should facilitate sharing of medical or health-related information in the case record between LDSS foster care staff and the Medical Assistance and C/THP units of the agency. Such cooperative communication procedures are necessary to support the child's receipt of all required health services.

CONNECTIONS

The CONNECTIONS Health Services Module has been designed to provide a systematic and organized presentation of the general health history and other critical health information pertinent to a child being served through the child welfare system. The primary purpose is to allow the child's case manager, case planner, assigned caseworker, agency nurse, or health care coordinator easy access to the most critical health information for the child. Maintaining the health module for each child in foster care is an efficient method for sharing this information.

If health information was obtained by the agency pursuant to authorized consent, no additional consent is required to enter this information into CONNECTIONS, except as noted in the next paragraph.

Confidential HIV-related information on anyone other than a foster child must not be entered into CONNECTIONS. The CONNECTIONS system does not have a built-in system capability to limit access to confidential HIV-related information to only those persons authorized by statute to have access. Therefore, the social services district or voluntary authorized agency must administer the system in a compliant manner. If a parent has HIV/AIDS, reference may be made in the case record to the parent's serious chronic illness without naming the diagnosis.

The health module has an enhanced level of security to protect the child's confidentiality. Details regarding the health module, including confidentiality examples, can be found in 08-OCFS-ADM-01.

Transfer or Discharge

When a child moves from one placement to another, the child's comprehensive health history must be transferred to the new placing agency, if different, and a copy given to the new caregiver.[7] In congregate care, the entire, original health record must be immediately transferred with the youth to the next placement. The correct agency must be assigned health care responsibility in CONNECTIONS.

Upon discharge from foster care, a copy of the child's health records must be given to the discharge resource (birth parent, guardian, adoptive parent, or at no cost to the youth if discharged to independent living). Confidential HIV-related information must not be disclosed to the discharge resource without a written release from the child if the child has the capacity to consent."[8]

[7] 18 NYCRR 357.3(b)(1) and 441.22(m).
[8] 18 NYCRR 357.3(b)(5).

➔ Encourage those receiving the records to share the child's health history with medical and mental health care providers if different from those treating the child while in care. For continuity of care, it is recommended that the child or youth continue to see the same health care providers as seen during placement, if possible.

Youth's Access to Own Health Records

When a youth makes a written request for the opportunity to inspect information related to his or her treatment in the possession of a health care provider, the provider must provide access to the information within 10 days. If parental consent was required for the services, the parent should make the request to view health records.[9]

Sharing Health Information in Congregate Care

In congregate care facilities, the health services staff are responsible for maintaining the confidentiality of health records. Access to health records is limited to health professional staff providing care to the youth or, in the absence of health staff, the agency director or designee, as well as the case manager, case planner, and caseworker assigned to that child. Certain other staff may be informed of a youth's health problems if that information is necessary for the staff to adequately perform their responsibility to provide for the health and safety of that youth. Health records should be secured in a locked cabinet, drawer, or room. Access to health information in CONNECTIONS should be granted based on the individual's need to know.

Regarding the release of records:

- Copies of relevant portions of the health record may be released to specialty health care providers (e.g., cardiologist) as needed in order to evaluate and treat the youth.

- Confidential information related to HIV infection may only be released following procedures defined in New York State Public Health Law Article 27-F and requires the written consent of the youth in most circumstances *(see Chapter 6, Medical Consents).*

Note: Your agency should have clear statements of policy and practice on gathering and sharing health information about children in placement and their families. It is recommended that agencies obtain legal guidance regarding their rights, responsibilities, and risks regarding sharing of health information.

[9] PHL Article 1, Title 2, 18(2)(c).

2 Flow of Confidential Health Information

When a child is placed in foster care, confidential health information should flow as follows:

- Birth parent/guardian provides past medical/mental health information and/or signs written release forms for prior health care providers to pass on this information.
- Agency staff sends request for release of prior health records form to prior health care providers.
- Prior health care providers send information to agency.
- Agency staff works with current health care providers and caregivers to obtain documentation of every health service provided while in foster care.
- Agency staff enters necessary information into CONNECTIONS.
- Agency staff shares information with caregivers and foster parent, as needed.
- Agency staff sends necessary information to specialty health care providers.
- Health information in CONNECTIONS populates sections of the Permanency Hearing Report. Review thoroughly before submitting to the court.
- Agency staff sends necessary information to discharge resource (birth parent, guardian, adoptive parent, child as appropriate) and same (or new) medical home.

3 Confidentiality and Disclosure of HIV-Related Information

Because of the sensitive nature of HIV/AIDS, the law[10] has strict provisions about confidentiality and disclosure of HIV-related information. All person-specific HIV-related information, even the fact that someone has been HIV tested, must be maintained in a confidential manner.[11] HIV information on anyone other than a foster child should not be entered into the CONNECTIONS system.

> "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 such conditions, including information pertaining to such individual's contacts."[12]

In all cases when HIV-related information is made available, a warning statement against further disclosure or redisclosure must be given to those receiving the information, except for those listed below in (d) (*see Section 6, Resources, for redisclosure statement*).

The HIV Risk Assessment protocol was established to benefit children in foster care through effective early identification, treatment, education, and risk reduction. The confidentiality requirements surrounding HIV should not interfere with the agency's responsibilities to appropriately plan and provide services to the child. As the child's assigned case manager, case planner, and caseworker are integral to these activities, these individuals have a need to know the HIV status of children on their workload. HIV information concerning a child in foster care may be shared *within* an authorized agency with staff who have a need to know without provision of a warning statement against redisclosure.

Requirements for confidentiality and disclosure of HIV-related information on children in foster care:

a. Direct access to HIV-related information concerning a foster child is limited to:

- The authorized agency responsible for the child.
- Staff within the authorized agency who need to know the information to supervise, administer, monitor, or provide services to the specific child and family.
- The child's medical care provider/facility.

[10] PHL Article 27-F.
[11] 18 NYCRR 431.7; 97 ADM-15 Foster Care: Assessment of Foster Children for Capacity to Consent and HIV Risk; Counseling of Adolescents; Legal Consent for HIV Testing; Documentation and Disclosure.
[12] PHL Article 27-F, 2780(7).

- The child with capacity to consent.

- The person authorized to give consent, if the child lacks capacity to consent.

b. The agency *must* disclose HIV-related information concerning a foster child, *whether or not the child has capacity to consent,* to the following:

- The child's foster parents or relative foster parents.
- The child's adoptive or prospective adoptive parents.
- Another authorized agency if the child is transferred.
- The child's law guardian.
- The child, if discharged into his/her own care.
- A former foster child who has since been adopted, upon request.

c. The agency *must* disclose HIV-related information concerning a foster child to the following *only under certain circumstances*:

- The parent/guardian if the child lacks capacity to consent.

- The parent/guardian of a child with capacity to consent only if the child provides written consent to disclosure to the parent/guardian.

- In a court hearing only when ordered by the judge after a hearing on the issue of disclosure.

- Community service providers only when necessary to obtain essential health or social services for the foster child, and only when the local social services commissioner or designee has signed specific authorization for the disclosure. Examples of providers: psychologist, home aide, day care or school staff only when medication or other medical necessity directly related to HIV infection or AIDS is involved.

d. The right of a person in (b) or (c) to redisclose confidential HIV-related information concerning a foster child is limited to the following:

- The child's adoptive parent or prospective adoptive parent of a foster child freed for adoption.

- The child's foster parents or relative foster parents only when necessary for the care, treatment, or supervision of the child.

- The child's law guardian when necessary to represent the child without capacity to consent in court proceedings.

- The child's law guardian when necessary to represent the child with capacity to consent in court proceedings only if the child has provided written consent for such disclosure.

(See Appendix A for the NYS DOH Authorization for Release of Confidential HIV-Related Information form.)

4 HIV Testing and Confidentiality

When a foster child has the capacity to consent, and HIV risk has been identified, the child or youth has the right to make all decisions about an HIV test, the type of test, and a *limited right* to make certain decisions about disclosure of information related to an HIV test. Part of the counseling of children with capacity to consent is informing them about these rights. The capacity to consent to the release of HIV-related information is determined without regard to the youth's age. Disclosure of HIV-related information requires written authorization, except as noted on the previous page.[13]

After being counseled about testing, the child or youth has the right to decide whether to have agency-supervised confidential HIV-related testing or the alternative of anonymous testing. Staff activities differ according to the decision:

- If the child or youth chooses confidential testing, obtain the child's written consent on DOH-2557 for redisclosure of test results to the agency, and arrange for testing within 30 days of the consent. Test results will be reported by the test site to the agency and recorded in the youth's health record, including the CONNECTIONS system.

- If the child chooses anonymous testing, offer to help the child obtain access to an anonymous testing site. The choice of anonymous testing is available in foster care only to a child or youth with capacity to consent. When anonymous testing is chosen, only the child or youth will receive the test result, and no information linking the youth's identity to the test request or result will be gathered or kept.

[13] 97 ADM-15 Foster Care: Assessment of Foster Children for Capacity to Consent and HIV Risk; Counseling of Adolescents; Legal Consent for HIV Testing; Documentation and Disclosure.

5 Agency Protocols for Protecting Confidentiality

Staff should have access to individual identifiable information only if their specific job responsibilities cannot be accomplished without access.[14] Steps that agencies can take to protect confidentiality of health information include:

- Maintain a separate health record.
- Provide in-house training to agency staff on confidentiality regulations. See http://www.health.state.ny.us/diseases/aids/training/index.htm.
- Develop and distribute procedures for how these regulations are followed at your site.
- Do not discuss health information about a child on your caseload with colleagues unless they have a "need to know."
- Do not leave health records on your desk when you're not using them.
- Communicate carefully with the recipient when mailing/faxing health information so they will be looking for the documents.
- Work with your CONNECTIONS Security Officer to monitor access to health information.
- Make sure caregivers of children with HIV infection are familiar with the redisclosure statement and the laws about redisclosure.
- Suggest that all agency staff (from directors to clerical) sign a "confidentiality contract."

[14] 18 NYCRR 357.5(g).

6 Resources

HIV and Confidentiality

See Appendix A for the Authorization for Release of Confidential HIV Related Information form (DOH-2557-HIPPA, Rev. 4/03). (For a copy of the form in English and other languages, go to the NYS Department of Health website, http://www.health.state.ny.us/, and click on HIV/AIDS).

For the Statewide Calendar of HIV/AIDS Trainings, including training on New York State's HIV Confidentiality Law (Public Health Law Article 27-F), go to http://www.health.state.ny.us/diseases/aids/training/index.htm.

The Warning Notice Against Redisclosure of Confidential HIV-Related Information (English and Spanish) can be found in 97-ADM-15 http://ocfs.state.nyenet/policies/external/1997/. This ADM is also in Appendix B.