§ 2761. Function, powers and duties. 1. The health care worker HIV/HBV advisory panel shall only evaluate and advise an HIV/HBV infected health care worker who voluntarily seeks the panel's review of the risk of HIV/HBV transmission to others through his/her workplace practice. Prior to the panel's evaluation of the worker, the panel must fully advise the worker of the panel's authority to investigate, to recommend practice restrictions or modifications, to advise facilities of such restrictions and to refer cases to professional licensing, registration and certification boards. If the health care worker is affiliated with or employed at a facility licensed by the department, the panel may evaluate and advise the worker only after such facility has completed its review of the scope of practice of the worker. This institutional review may be conducted through the facility's existing quality assurance program as required under section twenty-eight hundred five-j of this chapter, and need not require the creation of a separate facility HIV/HBV panel. Notwithstanding any other provision of law, rule or regulation, the panel may request and shall be entitled to receive patient records and other documents or information reasonably necessary for and relevant to the panel's deliberations and the implementation of this article including information and reports available to the department under section twenty-eight hundred five-m of this chapter, provided that the panel may only request records with patient names if essential to the panel's complete review of the case and provided further that employees of the department, other than the panel, shall redact patient names before panel review of such records. Any such information and reports provided to the panel that are subject to section two thousand eight hundred five-m of this chapter shall remain subject to the limitations on disclosure provided by such section. The panel may seek the advice of professionals with relevant expertise. The panel shall give the health care worker an opportunity to meet with the panel. The health care worker may be accompanied by a union or other representative at such meeting. Only when evidence indicates that the health care worker's practice poses a significant risk of harm to patients, the panel shall make appropriate recommendations that are least restrictive with respect to the health care worker's practice including, but not limited to, training or monitoring, or, if necessary, reassignment or practice restrictions.

2. The panel shall evaluate an HIV/HBV infected health care worker pursuant to comprehensive medical criteria, including:

(a) physical or mental condition that interferes with or is significantly likely to interfere with the worker's ability to perform assigned tasks or regular duties;

(b) lack of compliance with established guidelines to prevent transmission of disease and/or documentation or evidence of previous transmission of bloodborne pathogens;

(c) the appropriateness of techniques as related to performance of procedures; and

(d) any health condition that would pose a significant risk to others.

3. When the panel recommends training, monitoring, reassignment, any similar action, or practice restrictions, the health care worker shall provide written assurance to the panel that he/she has informed facilities licensed by the department where the worker provides patient care of the panel's recommendations and shall identify the person or persons at the facilities so informed. If the health care worker fails to inform facilities licensed by the department where he/she provides patient care of the panel's recommendations, the panel shall so notify such facilities. If the health care worker fails to comply with the panel's recommendations or compliance cannot be determined by the panel after reasonable effort, the panel shall disclose the nature of its recommendations to the professional licensing, registration or certification boards relevant to the health care worker. The panel may periodically monitor and reevaluate the worker, with the worker's consent, at a frequency and through a mechanism to be determined by agreement between the worker and the panel.

4. The information received by the panel, the record of deliberations of the panel, and the decisions of the panel are not disclosable pursuant to article six of the public officers law. If the health care worker fails to comply with the recommendations of the panel or compliance cannot be determined by the panel after reasonable effort, information held by the panel, the panel's deliberations and recommendations may be disclosed to and utilized by the office of

professional medical conduct, the office of professional discipline and appropriate disciplinary bodies. The meetings of the panel are not subject to article seven of the public officers law. The members of the panel are bound by article six-A of the public officers law (personal privacy protection law).

5. A health care worker's petition to the panel shall not prevent or preclude the worker from seeking relief in any other forum at any time.

6. The commissioner may promulgate regulations implementing this article.