

**UNIVERSITY OF MAINE SYSTEM
HIPAA POLICY #29
DISCLOSURE OF HIV INFORMATION**

I. General

Notwithstanding any other provision of these UMS HIPAA Policies, disclosure of PHI containing information pertaining to HIV test results and infection status shall be governed by the provisions of this policy.

II. HIV Test Results

A Covered Component may not disclose the results of an HIV test, except as follows:

- A. To the subject of the test;
- B. To a health care provider designated by the subject of the test in writing. When an individual has authorized disclosure of HIV test results to a person or organization providing health care, the Covered Component may make these results available only to other health care providers working directly with the patient and only for the purpose of providing direct medical or dental patient care.
- C. To a person or persons to whom the test subject has authorized disclosure in writing, except that the disclosure may not be used to violate any other provisions of law;
- D. To an anonymous testing site established pursuant to 5 M.R.S.A.19203-B;
- E. To employees of, or other persons designated by, the Department of Corrections, the Department of Human Services and the Department of Behavioral and Developmental Services, to the extent that those employees or other persons are responsible for the treatment or care of subjects of the test and as designated by Rules adopted by those agencies.
- F. To the Bureau of Health, which may disclose results to other persons only if that disclosure is necessary to carry out its duties as provided by law;
- G. As part of a medical record when release or disclosure of that record is authorized as described in section III. below; or
- H. In compliance with a Court order, to:
 - 1. A person authorized by 5 M.R.S.A.19203-C to receive test results following an accidental exposure; or
 - 2. A victim-witness advocate authorized by 5 M.R.S.A. 19203-F to receive the test results of a person convicted of a sexual crime as defined in section 19203-F, subsection 1, paragraph C, who shall disclose to a victim under section 19203-F, subsection 4.

This section does not prohibit limited administrative disclosure in conjunction with a mandatory testing program of a military organization subject to Title 37-B M.R.S.A. Nothing in this section may be construed as prohibiting the entry of an HIV test result on the patient's medical record in accordance with applicable law.

III. Medical Records

When a medical record entry is made concerning information of a person's HIV infection status, including the results of an HIV test, the following apply to the disclosure of that information as a part of the medical record.

A. Authorized Disclosure. The individual who is the subject of an HIV test, at or near the time the entry is made in the medical record, shall elect, in writing, whether to authorize the disclosure of that portion of the medical record containing the HIV infection status information when that individual's medical record has been requested. A new election may be made when a change in the individual's HIV infection status occurs or whenever the individual makes a new election. The disclosure form must clearly state whether or not the individual has authorized the disclosure of that information. The individual must be advised of the potential implications of authorizing the disclosure of that information.

1. When disclosure has been authorized, the custodian of the medical record may disclose, upon request, the individual's medical record, including any HIV infection status information contained in the medical record.
2. When disclosure of HIV infection status information has not been authorized, the custodian of the medical record may disclose that portion of the medical record that does not contain the HIV infection status information, in accordance with all applicable policies and laws.
3. Except as otherwise provided in this section, HIV infection status information may be disclosed only if the individual has specifically authorized a separate disclosure of that information. A general disclosure form is insufficient.

B. Legal and Administrative Proceedings. A medical record containing results of an HIV test, may not be disclosed, discoverable or compelled to be produced in any civil, criminal, administrative or other proceedings without the written authorization of the individual who is the subject of an HIV test, except in the following cases:

1. Proceedings held pursuant to the communicable disease laws, Title 22, M.R.S.A. chapter 251;
2. Proceedings held pursuant to the Adult Protective Services Act, Title 22, M.R.S.A. chapter 958-A;
3. Proceedings held pursuant to the child protection laws, Title 22, M.R.S.A. chapter 1071;
4. Proceedings held pursuant to the mental health laws, Title 34-B, M.R.S.A. chapter 3, subchapter IV, article III; and
5. Pursuant to a court order upon a showing of good cause, provided that the court order limits the use and disclosure of records and provides sanctions for misuse of records or sets forth other methods for ensuring confidentiality.

Nothing in this section may be interpreted to prohibit reviews of medical records for utilization review purposes by duly authorized utilization review committees or peer review organizations in conformity with all other applicable laws and policies. Qualified personnel conducting scientific research, management audits, financial audits or program evaluation with the use of medical records may not identify, directly or indirectly, any individual in any report of such research, audit, evaluation or otherwise disclose the identities of an individual tested in any manner.

Nothing in this section may prohibit access to medical records by the designated health care provider of the individual who is the subject of an HIV test in accordance with section II(b) above.

IV. Confidentiality Policy

Health care providers and others with access to medical records containing HIV infection status information shall have a written policy providing for confidentiality of all patient information consistent with this policy and the law. That policy must require, at a minimum, action consistent with disciplinary procedures for violations of the confidentiality policy.

Revised 02/05/2010