

§19203. Confidentiality of test

No person may disclose the results of an HIV test, except as follows: [PL 1987, c. 811, §3 (RPR).]

1. Subject of test. To the subject of the test; [PL 1987, c. 811, §3 (RPR).]

2. Designated health care provider. To a health care provider designated by the subject of the test in writing . When a patient has authorized disclosure of HIV test results to a person or organization providing health care, the patient's health care provider 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. Any health care provider who discloses HIV test results in good faith pursuant to this subsection is immune from any criminal or civil liability for the act of disclosing HIV test results to other health care providers; [PL 1999, c. 512, Pt. B, §1 (AMD); PL 1999, c. 512, Pt. B, §§5, 6 (AFF).]

3. Authorized person. 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 this chapter; [PL 1987, c. 811, §3 (RPR).]

4. Certain health care providers. A health care provider who procures, processes, distributes or uses a human body part donated for a purpose may, without obtaining informed consent to the testing, perform an HIV test in order to assure medical acceptability of the gift for the purpose intended. Testing pursuant to this subsection does not require pretest and post-test counseling; [PL 1987, c. 811, §3 (RPR).]

5. Research facility. The Department of Health and Human Services, a laboratory certified and approved by the Department of Health and Human Services pursuant to Title 22, chapter 411, or a health care provider, blood bank, blood center or plasma center may, for the purpose of research and without first obtaining informed consent to the testing, subject any body fluids or tissues to an HIV test 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; [PL 1987, c. 811, §3 (RPR); PL 2003, c. 689, Pt. B, §6 (REV).]

6. Anonymous testing sites. To an anonymous testing site established pursuant to section 19203-B; [PL 1987, c. 811, §3 (RPR).]

7. Other agencies. To employees of, or other persons designated by, the Department of Corrections and the Department of Health and Human Services, to the extent that those employees or other persons are responsible for the treatment or care of subjects of the test. Those agencies shall adopt rules, within 90 days of August 4, 1988, pursuant to chapter 375, subchapter 2, designating the persons or classes of persons to whom the test results may be disclosed. The rules of the Department of Corrections must designate those persons who may receive the results of an HIV test of a county jail inmate; [RR 2003, c. 2, §11 (COR).]

8. Bureau of Health. To the Department of Health and Human Services, which may disclose results to other persons only if that disclosure is necessary to carry out its duties as provided in Title 22, section 42 and chapters 250 and 251; [PL 2007, c. 539, Pt. N, §6 (AMD).]

9. Medical records. As part of a medical record when release or disclosure of that record is authorized pursuant to section 19203-D; [PL 2011, c. 347, §2 (AMD).]

10. Court ordered disclosure. To:

A. A person authorized by section 19203-C to receive test results following an accidental exposure; or [PL 1991, c. 803, §1 (NEW).]

B. A victim-witness advocate authorized by section 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; or [PL 2011, c. 347, §3 (AMD).]
[PL 2011, c. 347, §3 (AMD).]

11. Access by health information exchange or other entity. To a statewide health information exchange designated by the State that provides and maintains an individual protection mechanism by which an individual may choose to opt in to allow that statewide health information exchange to disclose that individual's health care information covered under this section to a health care provider or health care facility for purposes of treatment, payment and health care operations, as those terms are defined in 45 Code of Federal Regulations, Section 164.501. A state-designated statewide health information exchange also must satisfy the requirement in Title 22, section 1711-C, subsection 18, paragraph C of providing a general opt-out provision to an individual at all times.

A state-designated statewide health information exchange may disclose an individual's health care information covered under this section even if the individual has not chosen to opt in to allow the state-designated statewide health information exchange to disclose the individual's health care information when in a health care provider's judgment disclosure is necessary to:

A. Avert a serious threat to the health or safety of others, if the conditions, as applicable, described in 45 Code of Federal Regulations, Section 164.512(j)(2010) are met; or [PL 2011, c. 347, §4 (NEW).]

B. Prevent or respond to imminent and serious harm to the individual and disclosure is to a provider for diagnosis or treatment. [PL 2011, c. 347, §4 (NEW).]
[PL 2011, c. 347, §4 (NEW).]

This section does not prohibit limited administrative disclosure in conjunction with a mandatory testing program of a military organization subject to Title 37-B. [PL 1987, c. 811, §3 (RPR).]

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 this chapter. [PL 1999, c. 512, Pt. B, §3 (AMD); PL 1999, c. 512, Pt. B, §§5, 6 (AFF).]

SECTION HISTORY

PL 1987, c. 402, §A76 (NEW). PL 1987, c. 443, §2 (NEW). PL 1987, c. 539 (RPR). PL 1987, c. 811, §3 (RPR). PL 1989, c. 487, §1 (AMD). PL 1995, c. 319, §1 (AMD). PL 1995, c. 404, §4 (AMD). PL 1995, c. 560, §K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 1997, c. 70, §1 (AMD). PL 1997, c. 793, §§B1-3 (AMD). PL 1997, c. 793, §B6 (AFF). PL 1999, c. 3, §§4,5 (AFF). PL 1999, c. 127, §A13 (AMD). PL 1999, c. 512, §§B1-3 (AMD). PL 1999, c. 512, §B5 (AFF). PL 1999, c. 790, §§A59,60 (AFF). PL 2001, c. 354, §3 (AMD). RR 2003, c. 2, §11 (COR). PL 2003, c. 689, §B6 (REV). PL 2007, c. 539, Pt. N, §6 (AMD). PL 2011, c. 347, §§2-4 (AMD).

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