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Comparison of Pennsylvania Confidentiality of HIV-Related Information Act (Act 148) and Federal Health Insurance Portability and Accountability Act

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Summary

The Confidentiality of HIV-Related Information Act (commonly known as “Act 148”) - 35 P.S. § 7601, et seq.

Confidentiality of Records

- Applies to confidential HIV-related information** that identifies or reasonably could identify an individual as having HIV/AIDS and that is in the possession of a health or social services provider because they provide services to a patient or the patient has authorized release of the information.
- Health care and social service providers cannot disclose confidential HIV-related information without a written release from the subject of the information

Permissible disclosures without consent:

- Significant exposure (if appropriate rules followed)
- Partner notification (if appropriate rules followed)
- Court order
- Health care provider for purpose of treatment
- Health care provider if necessary to provide emergency care
- Insurer for purposes of reimbursement
- State/local vital statistics officer
- State/local public health agency
- Certain employees of county agencies for mental health/mental retardation, children/youth, juvenile probation, and residential service providers
- Funeral directors

Damages

- No statutory damages for violations, but compensatory damages may be available. Reasonable attorney’s fees and costs are available if a physician discloses in the course of significant exposure testing.**

Health Insurance Portability and Accountability Act (HIPAA) Regulations - 45 CFR § 160, et seq.

Confidentiality of Records

- Applies to protected health information** that is individually identifiable and transmitted or maintained in any format
- Health care providers and health plans can use or disclose protected health information with written consent of the subject of the information for the purposes of **treatment, payment, or health care operations**. Any other use requires written authorization from the subject. **Consent** can be brief and general; **authorization** must be detailed and limited.

Permissible disclosures without consent:

- Emergency treatment**, if the provider is required by law to treat the patient
- If the provider **attempts to get consent but is unable** due to substantial communication barriers and consent is inferred in the circumstances
- Specified public health and abuse reporting, judicial, administrative, or law enforcement proceedings
- To avoid **“serious threat to health or safety”**

Damages

- Civil monetary penalties are available for violations. Criminal penalties are also possible if knowing misuse, false pretenses, or intent to disclose are present.**

Summary

Preemption

- **Probably not preempted by HIPAA because it is “more stringent”**

Preemption

- **HIPAA generally preempts all other federal and state laws except those that are “more stringent”** with regard to their requirements, standards, or implementation specifications. **More stringent** is defined as a State law that meets one or more of the following criteria:
 - **Use or disclosure:** the law prohibits or restricts it in circumstances under which use or disclosure otherwise would be permitted. Exceptions: if disclosure is required by the Secretary of the federal Dept. of Health and Human Services (DHHS) in connection with determining whether a covered entity is in compliance with HIPAA, or to the individual who is the subject of the individually identifiable health information.
 - **Rights of the subject of the information of access to/ amendment of it:** the law permits greater rights of access or amendment.
 - **Information about use/ disclosure/rights/remedies to be provided to the subject of the health information:** the law provides a greater amount of information.
 - **Form or substance of an authorization or consent for use or disclosure of information:** the law provides requirements that narrow the scope or duration, increase the privacy protections afforded, or reduce the coercive effect of the circumstances surrounding the authorization or consent.
 - **Recordkeeping/ requirements relating to accounting of disclosures:** the law provides for the retention or reporting of more detailed information or for a longer duration.
 - **Any other matter:** the law provides greater privacy protection for the individual who is the subject of the individually identifiable health information.

Exceptions to preemption are made if DHHS determines that the State law:

(1) Is necessary:

Summary

- To prevent fraud and abuse related to the provision of/payment for health care*
 - To ensure appropriate State regulation of insurance/ health plans*
 - For State reporting on health care delivery or costs*
 - To serve a compelling need related to public health, safety, or welfare, and DHHS determines that the intrusion into privacy is warranted when balanced against the need to be served; or*
- (2) Has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances; or*
- (3) The state law provides for the reporting of disease or injury, child abuse, birth, or death, for the conduct of public health surveillance, investigation, or intervention, or if it requires health plan reporting for the purpose of audits, program monitoring and evaluation, or licensure/ certification of facilities or individuals.*

Provision-Specific Comparison

	Act 148	HIPAA
Protected information		
<p><i>Definitions</i></p>	<p>Confidential HIV-related information: Any information which is 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 and which concerns whether an individual has been the subject of an HIV-related test, or has HIV, HIV-related illness or AIDS; or any information which identifies or reasonably could identify an individual as having one or more of these conditions, including information pertaining to the individual's contacts (sex- or needle-sharing partners)</p> <p>35 P.S. § 7603</p>	<p>Health information: Any information, whether oral or recorded in any form or medium, that:</p> <ol style="list-style-type: none"> 1. Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and 2. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. <p>45 CFR § 160.103</p> <p>Individually identifiable health information: Information that is a subset of health information, including demographic information collected from an individual, and:</p> <ol style="list-style-type: none"> 1. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and 2. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and <ol style="list-style-type: none"> i. That identifies the individual; or ii. With respect to which there is a reasonable basis to believe the information can be used to

		<p>identify the individual.</p> <p>Protected health information: Individually identifiable health information that is transmitted by electronic media; maintained in any electronic media; or transmitted or maintained in any other form or medium. Protected health information excludes individually identifiable health information in education and student medical records.</p> <p>45 CFR § 164.501</p>
Individuals/Covered Entities with Confidentiality Obligations		
Health care providers	<p>Individual health care provider: A physician, nurse, emergency medical services worker, chiropractor, optometrist, psychologist, nurse-midwife, physician assistant, dentist or other person, including a professional corporation or partnership, providing medical nursing, drug or alcohol rehabilitation services, mental health services, other health care services or an employee or agent of such individual or an institutional health care provider.</p> <p>Institutional health care provider: A hospital, nursing home, hospice, clinic, blood bank, plasmapheresis or other blood product center, organ or tissue bank, sperm bank, clinical laboratory, residential or outpatient drug and alcohol rehabilitation service, mental health facility, mental retardation facility, home care agency as defined in the Act, or any health care institution required to be licensed in this Commonwealth whether privately or publicly operated.</p> <p>35 P.S. § 7603</p>	<p>Health care provider: Any individual or entity that provides medical or health services (including Medicare providers), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business, who transmits any health information in electronic form.</p> <p>45 CFR § 160.103</p>

<p><i>Insurers</i></p>	<p><i>Any insurance company, association or exchange authorized to do business in the Commonwealth under state insurance, hospital plan corporation, professional health services plan corporation, health maintenance organization, or fraternal benefit society law.</i></p> <p><i>35 P.S. § 7603</i></p>	<p>Health plans: <i>An individual or group plan that provides/pays costs of medical care.</i></p> <p>Health plan includes:</p> <ul style="list-style-type: none"> <i>(i) A group health plan</i> <i>(ii) A health insurance issuer</i> <i>(iii) An HMO</i> <i>(iv) Part A or Part B of the Medicare program</i> <i>(v) The Medicaid program</i> <i>(vi) An issuer of a Medicare supplemental policy</i> <i>(vii) An issuer of a long-term care policy, excluding a nursing home fixed- indemnity policy</i> <i>(viii) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers</i> <i>(ix) The health care program for active military personnel</i> <i>(x) The veterans health care program</i> <i>(xi) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)</i> <i>(xii) The Indian Health Service program</i> <i>(xiii) The Federal Employees Health Benefits Program</i> <i>(xiv) An approved State child health plan providing benefits for child health assistance</i> <i>(xv) The Medicare+Choice program</i> <i>(xvi) A high-risk pool that is a mechanism established under State law to provide health insurance coverage or comparable coverage to eligible individuals.</i> <i>(xvii) Any other individual or group plan, or combination of individual or group plans, that provides or pays for the cost of medical care</i> <p>Health plan excludes:<i>(i) Any policy, plan, or program to the extent that it provides, or pays for the cost of,</i></p>
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		<p><i>excepted benefits listed in the Public Health Service Act (42 U.S.C. 300gg-91(a)(2)); and</i></p> <p><i>(ii) A government-funded program:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>Whose principal purpose is other than providing, or paying the cost of, health care; or</i> <input type="checkbox"/> <i>Whose principal activity is:</i> <input type="checkbox"/> <i>The direct provision of health care to persons; or</i> <input type="checkbox"/> <i>The making of grants to fund the direct provision of health care to persons.</i> <p><i>45 CFR § 160.103</i></p> <p>Health Care Clearinghouse</p> <p>A public or private entity, including a billing service, repricing company, community health management information system or community health information system and “value-added” networks and switches, that does either of the following functions: (1)</p> <p>Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction.</p> <p>(2) Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.</p> <p><i>45 CFR § 160.103</i></p> <p>Business associate</p> <ul style="list-style-type: none"> <input type="checkbox"/> A person who: <ul style="list-style-type: none"> (i) On behalf of a covered entity or organized health care arrangement performs/assists in the performance of a function or activity involving the use or disclosure of individually identifiable health information; or
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		<p>(ii) Provides legal, actuarial, accounting, consulting, data aggregation management, administrative, accreditation, or financial services to or for a covered entity or organized health care arrangement, where the provision of the service involves the disclosure of individually identifiable health information from the covered entity or from another business associate of the covered entity</p> <ul style="list-style-type: none"> <input type="checkbox"/> A covered entity participating in an organized health care arrangement that performs one of these functions does not, simply through the performance of the function, become a business associate of other covered entities participating in the organized health care arrangement. <input type="checkbox"/> A covered entity may be a business associate of another covered entity. <p><i>45 CFR § 160.103</i></p>
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Informed Consent

<p><i>Generally</i></p>	<p><i>No person/employee/agent who obtains confidential HIV-related information either in the course of providing health/social service or as a result of written release of information can be compelled to disclose that information. Disclosure is only permissible with a valid written release. (See p. 14 for exceptions)</i></p> <p><i>35 P.S. § 7607(a)</i></p>	<p><i>Use for treatment/payment/health care operations requires consent</i> prior to using or disclosing protected health information. A simple consent that is broad and general is adequate.</p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>Treatment is the provision/coordination/management of health care by providers</i> <input type="checkbox"/> <i>Payment includes activities to obtain premiums/determine responsibilities for coverage and provision of benefits</i> <input type="checkbox"/> <i>Health care operations are activities related to core functions of the provision of health care.</i> <p><i>A provider that fails to obtain consent must document its attempt to obtain it and the reason why it was not obtained.</i></p>
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<p><i>Elements of written consent</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> <i>Specific name/general designation of the person permitted to disclose</i> <input type="checkbox"/> <i>Name/title of individual or name of organization to which disclosure is to be made</i> <input type="checkbox"/> <i>Name of the subject</i> <input type="checkbox"/> <i>Purpose of the disclosure</i> <input type="checkbox"/> <i>How much/what kind of information is to be disclosed</i> <input type="checkbox"/> <i>Signature of the subject</i> <input type="checkbox"/> <i>Date on which consent signed</i> <input type="checkbox"/> <i>Revocation statement indicating that consent may be withdrawn at any time, except to the extent that the person who is to make the disclosure has already acted in reliance on it</i> <input type="checkbox"/> <i>Date/event/condition of expiration of consent, if not revoked earlier</i> <p><i>35 P.S. § 7607(c)</i></p>	<p>The consent must be written in plain language and:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Inform the individual that protected health information may be used and disclosed to carry out treatment, payment, or health care operations <input type="checkbox"/> Refer the individual to statutory notice for a more complete description of such uses and disclosures and state that the individual has the right to review the notice prior to signing the consent <input type="checkbox"/> If the covered entity has reserved the right to change its privacy practices, state that the terms of its notice may change and describe how the individual may obtain a revised notice <input type="checkbox"/> State that: <input type="checkbox"/> The individual has the right to request that the covered entity restrict how protected health information is used or disclosed to carry out treatment, payment, or health care operations; <input type="checkbox"/> The covered entity is not required to agree to requested restrictions; and <input type="checkbox"/> If the covered entity agrees to a requested restriction, the restriction is binding on the covered entity <input type="checkbox"/> State that the individual has the right to revoke the consent in writing, except to the extent that the covered entity has acted in reliance on it <input type="checkbox"/> Be signed by the individual and dated. <p><i>45 CFR § 164.506(c)</i></p> <p>The authorization must be written in plain language and include:</p>

		<ul style="list-style-type: none"> <input type="checkbox"/> A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion <input type="checkbox"/> The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure <input type="checkbox"/> The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure <input type="checkbox"/> An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure <input type="checkbox"/> A statement of the individual’s right to revoke the authorization in writing and the exceptions to the right to revoke, together with a description of how the individual may revoke the authorization <input type="checkbox"/> A statement that information used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient and no longer be protected by this rule <input type="checkbox"/> Signature of the individual and date <input type="checkbox"/> If the authorization is signed by a personal representative of the individual, a description of their authority to act for the individual. <p><i>45 CFR § 164.508</i></p>
<p><i>Testing</i></p>	<p><i>No HIV-related test can be performed without written consent of the subject, including an explanation of the test, its purpose, potential uses, limitations, and the meaning of results.</i></p> <p><i>All tests require pre-test counseling. No test can be determined or reported positive without a confirmatory test. No test results (positive or negative) can be revealed without immediate face-to-face counseling.</i></p> <p><i>35 P.S. § 7605</i></p>	

Confidentiality Obligations & Disclosure

<p><i>Generally</i></p>	<p>No person/employee or their agent may disclose or be compelled to disclose any confidential HIV-related information they obtain either in the course of providing health or social service or as a result of a written release from a patient.</p> <p><i>35 P.S. § 7607(a)</i></p> <p>Consent is defective if it:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Has expired <input type="checkbox"/> On its face substantially fails to conform to the necessary written elements <input type="checkbox"/> Is known to have been revoked <input type="checkbox"/> Is known by the person holding the information to be materially false <p><i>35 P.S. § 7607(d)</i></p> <p>Disclosure must be accompanied by:</p> <p>“This information has been disclosed to you from records protected by Pennsylvania law. Pennsylvania law prohibits you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or is authorized by the Confidentiality in HIV-Related Information Act. A general authorization for the release of medical or other information is not sufficient for this purpose.”</p> <p><i>35 P.S. § 7607(e)</i></p>	<p>Use for treatment/payment/health care operations requires consent prior to using or disclosing protected health information. When using or disclosing protected health information or when requesting protected health information from another entity, reasonable efforts must be made to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.</p> <p>Defective consent: lacks a required element or has been revoked. <i>45 CFR § 164.506</i></p> <p>Defective authorization:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The expiration date has passed or the expiration event is known by the covered entity to have occurred <input type="checkbox"/> It has not been filled out completely <input type="checkbox"/> It is known by the covered entity to have been revoked <input type="checkbox"/> It lacks a required element <input type="checkbox"/> Any material information in it is known by the covered entity to be false <p><i>45 CFR § 164.508</i></p>
<p><i>Disclosure obligations by specific entities</i></p>	<p>Institutional health care provider</p>	<p>Business associates</p>

If the provider has access to or maintains individually identifying confidential HIV-related information it must establish written procedures for confidentiality and disclosure of the records in accordance with the Act.

35 P.S. § 7607(f)

A consent/authorization is not required for covered entities to **disclose protected health information to their business associates** and to allow their business associates to create and receive protected health information on their behalf.

Whenever a covered entity has a business associate arrangement that involves the use or disclosure of protected health information, the covered entity is required to have a **written agreement that protects the privacy of the information.**

A business associate must make available protected health information to the same extent the covered entity must.

45 CFR § 164.502(e); 164.504(e)

Indirect providers

Generally speaking, an indirect health care provider is a provider who only interacts with physicians, not patients.

Indirect health care providers may use and disclose a patient's protected health information for treatment, payment, or health care operations purposes without a consent.

45 CFR § 164.514; 164.501

Individuals involved in the patient's care/payment for it

A consent/authorization generally is not needed to disclose a patient's protected health information to someone involved in the patient's care or payment for it.

This does not apply if the covered entity has agreed to a patient request not to make such disclosures.

When invoking this exception, a covered

		<p>entity is also required to limit the disclosure to information that is directly relevant to the recipient's involvement with the patient's care or payment for it.</p> <p><input type="checkbox"/> If the patient is present for, or otherwise available prior to, the disclosure, and has the capacity to make health care decisions, the covered entity must provide the patient with the opportunity to agree or object to the disclosure and may not disclose if the patient objects.</p> <p>45 CFR § 164.501(b)</p>
<p>Insurer obligations</p>	<p><i>HIV-related tests can only be performed with written consent of the subject. Negative test results are only disclosed if the subject requests notification. Positive results can only be disclosed to the physician, state/local health department, or local community-based organization designated on the written consent form. The designee shall then notify the subject.</i></p> <p><i>35 P.S. § 7606(h)</i></p>	<p>Under HIPAA, health plans have some distinctive disclosure and information-protection obligations related to plan sponsors (generally employers offering benefits). Health plans may:</p> <p><input type="checkbox"/> Disclose information to the plan sponsor if the plan's documents restrict uses and disclosures by the sponsor pursuant to the privacy regulations</p> <p>Contracts between health plans and sponsors must contain language indicating agreement to abide by privacy provisions.</p> <p>A group health plan/ health insurance issuer/ HMO may disclose summary health information (summarizes the claims history, expenses, type of claims; individual identifiers must be deleted) to the plan sponsor, if the plan sponsor requests the summary health information for the purpose of obtaining premium bids or modifying/amending/terminating the group health plan.</p> <p><i>See generally 45 CFR § 164.504.</i></p>

Permissible disclosure without consent

<p><i>When/to whom confidential information may be disclosed without consent of subject</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> <i>Subject/patient</i> <input type="checkbox"/> <i>Physician who ordered the test</i> <input type="checkbox"/> <i>Anyone specifically named in the written consent form</i> <input type="checkbox"/> <i>Agents/employees/medical staff members of health care providers that are involved in the medical care or treatment of the subject if the information was received during the course of the subject's diagnosis or treatment by the provider</i> <input type="checkbox"/> <i>Oversight agencies including peer review organizations/committees, nationally recognized accreditation agencies, federal/state government agencies with responsibilities over health care providers</i> <input type="checkbox"/> <i>Individual health care providers involved in the care of the subject or consulted to determine diagnosis/treatment of the subject when knowledge of the condition/test result is necessary to provide emergency care or appropriate treatment</i> <input type="checkbox"/> <i>Insurers, when necessary to reimburse health care providers or pay claims</i> <input type="checkbox"/> <i>Those authorized to gather/transmit/receive vital statistics</i> <input type="checkbox"/> <i>State/local departments and boards of health as authorized by state disease prevention/control law</i> <input type="checkbox"/> <i>Anyone allowed access pursuant to a court order</i> <input type="checkbox"/> <i>Funeral directors responsible for the acceptance/preparation of a deceased subject</i> <input type="checkbox"/> <i>Employees and contracted residential</i> 	<ul style="list-style-type: none"> <input type="checkbox"/> To the subject/individual <input type="checkbox"/> To health care entities with valid authorization for reasons that do not require consent and are other than treatment, payment, or health care operations <i>45 CFR § 164.502</i> <p>A covered health care provider may, without consent, use or disclose protected health information to carry out treatment, payment, or health care operations, if:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The provider has an indirect treatment relationship with the individual; or <input type="checkbox"/> The provider created or received the protected health information in the course of providing health care to an individual who is an inmate. <p>A covered health care provider may, without prior consent, use or disclose protected health information created or received to carry out treatment, payment, or health care operations:</p> <ul style="list-style-type: none"> <input type="checkbox"/> In emergency treatment situations, if the provider attempts to obtain consent as soon as reasonably practicable after the delivery of such treatment <input type="checkbox"/> If the provider is required by law to treat the individual, and the provider attempts to obtain consent but is unable to <input type="checkbox"/> If a provider attempts to obtain consent from the individual but is unable to due to substantial barriers to communicating with the individual, and the provider determines, in the exercise of professional judgment, that the individual's consent to receive
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	<p><i>providers of county/state agencies for mental health/ retardation, children/youth, juvenile probation, and delinquent youth who are:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>Generally authorized to receive medical information;</i> <input type="checkbox"/> <i>Responsible for ensuring the subject receives appropriate health care; and</i> <input type="checkbox"/> <i>Need to know the HIV-related information to ensure such care is provided.</i> <p><i>35 P.S. § 7607(a)</i></p>	<p>treatment is clearly inferred from the circumstances. <i>45 CFR § 164.506</i></p> <p>HIPAA permits covered entities to use/disclose protected health information without consent or authorization to the extent necessary in specified situations, including:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Public health reporting <input type="checkbox"/> Reporting victims of abuse, neglect, or domestic violence <input type="checkbox"/> Health oversight activities <input type="checkbox"/> Judicial and administrative proceedings <input type="checkbox"/> Law enforcement <input type="checkbox"/> Coroners, medical examiners, and funeral directors <input type="checkbox"/> Organ, eye, tissue donation <input type="checkbox"/> Research purposes, with Institutional Review Board approval <input type="checkbox"/> Avoid a “serious threat to health or safety” <input type="checkbox"/> Specialized governmental functions <p><i>45 CFR § 164.512</i></p> <p>Exceptions to general confidentiality obligations:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Disclosures to or requests by a health care provider for treatment <input type="checkbox"/> Uses or disclosures made to the individual or pursuant to an authorization <input type="checkbox"/> Uses or disclosures that are required by law or for compliance with the law <p><i>45 CFR § 164.502</i></p>
<p><i>Court-ordered disclosure</i></p>	<p><i>Only if:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>The person seeking the information has demonstrated a compelling need for it that cannot be accommodated by other means;</i> <i>or</i> <input type="checkbox"/> <i>The person seeking to disclose the information has a compelling need to do so.</i> 	<p><i>A covered entity may disclose protected health information to law enforcement officials if required by law or pursuant to a court order, grand jury subpoena, or administrative request, if the information is relevant and material and the request is specific and limited in scope.</i></p> <p><i>45 CFR § 164.512</i></p>

	<p><i>HIV-related test/ disclosure of results may be ordered if:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>The individual whose test is sought was offered informed consent and pretest counseling and either refused to or was unable to give consent;</i> <input type="checkbox"/> <i>The applicant was exposed – in a way presenting significant risk of exposure to HIV infection – to a body fluid of the person whose test is sought; AND</i> <input type="checkbox"/> <i>The applicant has a compelling need to ascertain the HIV test result of the source individual.</i> <p><i>Courts are instructed to determine “compelling need” by weighing the need for disclosure against the privacy interest of the individual and the public interests that may be harmed by disclosure.</i></p> <p><i>Before granting an order, the court must provide the subject with notice and a reasonable opportunity to participate in the court proceeding. Orders require “appropriate safeguards” against unauthorized disclosure.</i></p> <p><i>35 P.S. § 7608</i></p>	
<p><i>“Significant exposure”</i></p>	<p><i>An individual health care/emergency care provider exposed to a subject’s blood/bodily fluids during the course of treatment may, within 72 hours, request that a physician determine if the exposure is “significant” (capable of transmitting HIV, according to the most current CDC guidelines). A physician may not certify his/her own exposure. If the exposure is certified as significant, the source patient shall be notified of the exposure and be given an</i></p>	

	<p>opportunity to consent to HIV testing. <i>If the source patient refuses, then his/her available blood may be tested. Available blood is blood in the possession of the institutional health care provider or the source patient's physician pursuant to a valid authorization.</i></p> <p><i>The exposed provider can only be notified of the results of the test if the results of the provider's own baseline HIV test were negative. No further disclosure of these test results is permitted.</i></p> <p><i>35 P.S. § 7603 (definition); 7606</i></p>	
<p><i>Partner notification</i></p>	<p><i>Physicians may disclose confidential HIV-related information if:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>Disclosure is made to a known contact (needle- or sex-sharing partner of the subject);</i> <input type="checkbox"/> <i>The physician reasonably believes disclosure is medically appropriate and there is a significant risk of future infection to the contact;</i> <input type="checkbox"/> <i>The physician has counseled the subject on the need to notify the contact, and the physician reasonably believes the subject will not inform the contact or abstain from sexual/needle-sharing behavior that poses a significant risk of infection to the contact; and</i> <input type="checkbox"/> <i>The physician has informed the subject of his intent to disclose.</i> <p><i>During the disclosure, the physician cannot disclose the identity of the subject to the contact. There is no affirmative duty to identify, locate, or notify any contact.</i></p>	

	35 P.S. § 7609	
		<p>Look to whether state law is “more stringent” than federal for nonconsensual disclosure. HIPAA does permit use/disclosure of protected health information without consent or authorization for purposes of:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Mandatory reporting under federal, state, or local law <input type="checkbox"/> Voluntary disclosure in limited situations to foster public health, including disclosure to a: <ul style="list-style-type: none"> <input type="checkbox"/> public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability; <input type="checkbox"/> public health authority/appropriate government authority authorized by law to receive reports of child abuse or neglect; <input type="checkbox"/> person subject to the jurisdiction of the Food and Drug Administration for adverse events or product tracking; <input type="checkbox"/> person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or <input type="checkbox"/> employers, about an individual who is a member of the workforce, in select situations <input type="checkbox"/> Preventing or lessening a serious and imminent threat to health or safety if the disclosure is to people able to prevent or lessen the harm or to law enforcement to identify an individual if there is evidence that the person admitted to participating in a violent crime or the person has escaped from custody

		<p>☐ <i>Law enforcement for the purpose of providing health care services to an inmate and to protect the health and safety of the inmate or others</i></p> <p><i>45 CFR § 164.512</i></p>
Enforcement		
<i>Violations</i>	<p><i>The Act establishes a private right of action. Each disclosure or each test conducted in violation of the provisions of the Act is a separate violation for purposes of civil liability.</i></p> <p><i>35 P.S. § 7611</i></p>	<p><i>Individuals may file complaints with the Secretary of DHHS regarding HIPAA violations by covered entities. The Secretary of DHHS may also undertake “compliance reviews” to determine whether covered entities are in violation.</i></p> <p><i>45 CFR 160.306; 308</i></p>
<i>Damages</i>	<p><i>Compensatory damages are available for violations of the Act. Disclosure by a physician/physician’s employee in violation of the significant exposure testing/reporting requirements entitles the litigant to reasonable attorney’s fees and costs.</i></p> <p><i>35 P.S. § 7610</i></p>	<p><i>DHHS may impose civil monetary penalties of up to \$100 per person per violation, and up to \$25,000 per person per violation for a calendar year.</i></p> <p><i>Criminal penalties are also available for knowing misuse of health identifiers or information, use under false pretenses, and intent to sell, transfer or use information for commercial advantage, personal gain, or malicious harm.</i></p> <p><i>42 USC § 1320d</i></p>