**Section 697.140 Nondisclosure of the Identity of a Person Tested or Test Results**

a) *No person may disclose or be compelled to disclose HIV-related information, except to the following persons.* (Section 9 of the Act)The term "disclose" as used in this subsection (a) shall not prohibit internal use by a person, or a person's agents or employees, for the purposes of treatment, payment and health care operations, as those terms are defined in the HIPAA Privacy Rule. Any internal use shall be limited to those agents or employees, and the minimum necessary information, needed to accomplish the intended purposes of treatment, payment or health care operations.

1) *The subject of the test or the subject's legally authorized representative. A physician may notify the spouse or civil union partner of the test subject, if the test is positive, and has been confirmed, provided the physician has first sought unsuccessfully to persuade the patient to notify the spouse or civil union partner, or that, a reasonable time after the patient has agreed to make the notification, the physician has reason to believe that the patient has not provided the notification.* (Section 9(a) of the Act).

2) *Any person designated in a legally effective authorization for release* *of HIV-related information executed by the subject of the HIV-related information or the subject's legally authorized representative*. (Section 9(b) of the Act) A legally effective release means a time-limited written release of HIV-related information signed by the test subject.

3) *An authorized agent or employee of a health care facility or health care* professional or referring, treating or consulting health care professional of the test subject, *if*:

A) *The health care facility or health care* professional *is authorized to obtain the test results.* Health care facility or health care professional, for the purposes of this subsection (a)(3)(A), includes personnel who handle and process medical records for that health care facility or health care professional;

B) *The agent or employee* or referring, treating or consulting health care professional of the test subject *provides patient care or handles or processes specimens of body fluids or tissues;*

C) The agent or employee or the test subject's referring, treating or consulting health care professional *has a need to know such information*. (Section 9(c) of the Act); or

D) The agent or employee when involved in an accidental direct skin or mucous membrane contact with the blood or bodily fluids of a patient that is of a nature likely to transmit HIV, such as needle stick or percutaneous exposure, as certified by a health care professional.

4) *The Department* or the local health authority, *in accordance with rules for reporting and controlling the spread of disease*, or *as otherwise provided by State law*. (See 77 Ill. Adm. Code 690, 693, 250, 300, 330, 340, 350, 370, 390, and 840.) The Department, local health department or designated agent shall not *disclose HIV test results and HIV-related information, publicly or in any action of any kind in any court or before any tribunal, board or agency. HIV test results and HIV-related information shall be protected from disclosure in accordance with the provisions of Sections* 8-2101 *through* 8-2105 *of the Code of Civil Procedure.*  (Section 9(d) of the Act)

5) *A health care facility, health care provider, or health care professional which procures, processes, distributes or uses*:

A) *A human body part from a deceased person with respect to medical information regarding the person; or*

B) *Semen provided prior to September 21, 1987, for the purpose of artificial insemination.* (Section 9(e) of the Act)

6) *Health* care *facility staff committees for the purpose of conducting program monitoring, program evaluation or service reviews* conducted by, but not limited to, the Department, local health authority or designated agent*.* (Section 9(f) of the Act)

7) *Any health care provider, health care professional, or employee of a health care facility, and any firefighter or any* *EMR, EMT, A-EMT, paramedic, PHRN,* or *EMT-I* *involved in an accidental direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his* or her *medical judgment.* (Section 9(h) of the Act)

8) *Any law enforcement officer, as defined in Section 7(c)* of the Act, *involved in the line of duty in a direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his* or her *medical judgment.* (Section 9(i) of the Act)

9) *A temporary caretaker of a child taken into temporary protective custody by the Department of Children and Family Services pursuant to Section 5 of the Abused and Neglected Child Reporting Act.*  (Section 9(j) of the Act)

10) *In the case of a minor under 18 years of age whose test result is positive and has been confirmed, the health care professional who ordered the test shall make a reasonable effort to notify the minor's parent or legal guardian if, in the professional judgment of the health care professional, notification would be in the best interest of the child and the health care professional has first sought unsuccessfully to persuade the minor to notify the parent or legal guardian or, a reasonable time after the minor has agreed to notify the parent or legal guardian, the health care professional has reason to believe that the minor has not made the notification.* (Section 9(k) of the Act)

b) HIV test results may be disclosed to researchers when done in a manner that does not reveal the identity of the subject of the test. The de-identification of test results may be performed by an authorized agent or employee of a health facility or health care professional. Any test results that cannot be revealed without identifying the subject of the test shall be disclosed only in accordance with subsection (a). The Department shall disclose test results and demographic data without identifying information to researchers, in accordance with Section 697.220.

c) No person may disclose unconfirmed HIV test results in a manner that permits the identification of the subject of the test, except in accordance with Section 697.100(a)(1).

d) Documentation of informed consent and HIV-related information may be maintained, documented, and transmitted in a confidential manner in an electronic medical record system, medical record or confidential fax that allows disclosure only to persons authorized to receive the information under subsection (a).

e) Liability and Sanctions

1) *Nothing in* the *Act* or this Part *shall be construed to impose civil liability or criminal sanction for disclosure of a test result in accordance with any reporting requirement of the Department for a diagnosed case of HIV infection, AIDS or a related condition*. (Section 15 of the Act)

2) *Nothing in* the *Act* or this Part *shall be construed to impose civil or criminal sanction for performing a test without informed consent pursuant to the provisions of Section 7(b) or (c) of the Act.*  (Section 15 of the Act)

3) The *intentional or reckless violation of the* Act or this Part *shall constitute a* *Class A misdemeanor*. (Section 12 of the Act)

4) *No civil liability or criminal sanctions shall be imposed for any disclosure or non-disclosure of a test result to a spouse or civil union partner by a physician acting in good faith. For the purposes of any proceedings, civil or criminal, the good faith of any physician shall be presumed.* (Section 9(a) of the Act)

5) *No civil liability or criminal sanctions shall be imposed for any notification or non-notification of a minor's test result* to a parent or legal guardian *by a health care professional acting in good faith. For the purposes of any proceedings, civil or criminal, the good faith of any health care professional shall be presumed.* (Section 9(a) of the Act)

f) Sections 697.110, 697.120, 697.130 and 697.140 *shall not apply to* eligibility and coverage requirements established by *a health maintenance organization nor to any insurance company, fraternal benefit society, or other insurer regulated under the* *Illinois Insurance Code*. (Section 15.1 of the Act)

(Source: Amended at 42 Ill. Reg. 6425, effective March 21, 2018)